TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 291.

CHARLES L. EASTON, APPELLANT,

vs.

THE GERMAN-AMERICAN BANK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 16, 1885.

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1 In the United States Circuit Court for the Southern District of New York. In Equity.

CHARLES L. EASTON
vs.
THE GERMAN-AMERICAN BANK OF NEW YORK.

In the United States Circuit Court, Second Circuit and Southern District of New York. In Chancery.

To the honorable judge of said court, in chancery sitting:

Charles L. Easton, of Chicago, county of Cook, State of Illinois, and a citizen of said State of Illinois, brings this his bill of complaint against The German-American Bank, a corporation
2 created and doing business under the laws of the State of New York and having its principal place of business in the city of New York as a citizen thereof.

And thereupon your orator complains and says that heretofore, to wit, on the 14th day of April, 1875, James H. Bowen, George S. Bowen, and Chauncey T. Bowen were partners trading at Chicago under the name and style of Bowen Brothers; that on the day and year last aforesaid they borrowed divers sums of money of the said The German-American Bank, amounting in all to the sum of $27,500, represented by three promissory notes, one for $13,500, one for $7,000, and the other for $7,000; that to secure the said indebtedness the said Bowen Brothers lodged with the said The German-American Bank as collateral thereto forty (40) bonds executed by themselves, payable to bearer, of the denomination of one thousand dollars each, dated the 1st day of April, 1873, which said bonds were also secured by a certain deed of trust made by the said James H., George S., and Chauncey T. Bowen to George W. Smith upon certain property and real estate situated in the county of Cook, in the State of Illinois, the undivided two-thirds of the following-described real estate, to wit:

First. The east half of the northeast quarter of section thirty-one (31), township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian, excepting five acres described as follows: Commencing twenty rods west from the northeast corner of said quarter-section, thence running south parallel to the east line of said quarter-section forty (40) rods; thence running west twenty (20) rods; thence north forty (40) rods to section line; thence running east along the section line twenty rods to the place of beginning.

3 Second. The southwest fraction of section twenty-nine (29), in township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian.

Third. The west fractional half of section thirty-two (32), in township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian.

In which said deed of trust was contained a power of sale in case of default to pay the principal or interest of said bonds, and in and

by said deed of trust was also secured sixty (60) other bonds of the denomination of one thousand dollars each, held by divers parties.

That afterwards such proceedings were had under the said deed of trust to the said George W. Smith that the holders of the said bonds, to wit, the said German-American Bank, as holder of said forty bonds as collateral security as aforesaid, and divers other persons holding other of the said bonds, that they, the said bondholders, agreed between themselves that at the sale of the premises to be made by the said trustees, George W. Smith, Wirt Dexter might bid off the said premises for the sum of fifty thousand ($50,000) dollars in and for the interest of the said bondholders, upon an understanding that he should convey to the said bank the undivided $\frac{40}{100}$ of all the estate conveyed by the said Bowens to the said Smith, as trustees, and that said Dexter should convey to the other bondholders their proportionate share according to the number of bonds held of the said trust property bid in by him. And your orator in fact says that the said agreement made between the said Dexter and the said bondholders was, in fact, afterwards, to wit, on or about the 2d day of January, 1877, carried out, in this, that on the day and year last aforesaid, said trustee, in execution of the powers
4 contained in said deed of trust, sold the said premises to said Wirt Dexter, upon and for a bid of $50,000, and said Dexter did, amongst other things, convey to Henry Rocholl, the president of said bank, for the use and benefit of said bank, an undivided $\frac{40}{100}$, or thereabout, of all the estate so conveyed to said Smith as trustee; and after a partition of the said premises, as hereinafter alleged, said Rocholl conveyed the same as divided to and unto the said German-American Bank.

And your orator in fact says that neither the said bank nor the said Rocholl paid anything for the said property, but obtained the benefit thereof solely through the said forty bonds.

Your orator further says that at the time the said sale by the said trustee was made, or about that time, there was pending in the circuit court of Cook county, State of Illinois, a certain bill for partition, wherein said Rocholl was a party, and wherein such proceedings were had that the said interest and title conveyed to said Rocholl as aforesaid, as undivided as aforesaid, was set off and partitioned in severalty by the order and decree of the said circuit court, wherein and whereby was set off in severalty in that behalf for the undivided interest represented by the said Rocholl the following-described premises, to wit, the south half of the northeast quarter of the northeast quarter of said section thirty-one (31); also a strip of land three hundred and thirty feet in width from north to south off from the south end of the south half of the northwest quarter of said fractional section thirty-two (32), and extending from east to west from the west line of said section thirty-two (32) to the shore of Lake Michigan; also the north half of the north half of the southwest quarter of said fractional section thirty-
5 two (32); and also the south half of the north half of the southwest quarter of said fractional thirty-two (32), excepting the west five (5) acres thereof, as by reference to said decree, entered

at the January term, A. D. 1880, of said circuit court will more fully appear.

That afterwards, to wit, in the month of November, 1880, said Rocholl conveyed the said last-described premises, set off to him in severalty as aforesaid, to the said German-American Bank, as by reference to a deed in that behalf recorded in the recorder's office of Cook county, State of Illinois, will more fully and at large appear.

Your orator further showeth unto your honors that shortly after the sale by the said trustee, and in or about the month of June, 1877, the said firm of Bowen Brothers became and were adjudged bankrupts under the bankrupt law of the United States of America, then in force by the district court of the United States in and for the northern district of Illinois; that such proceedings were afterward had that, to wit, in the month of January, 1878, Robert E. Jenkins, Esq., was appointed general assignee in bankruptcy of the property and estate of the said Bowen Brothers, and your orator saith that at the time last aforesaid the said notes of the said Bowen Brothers to the said German-American Bank were held and owned by the said bank, and that said bank had then, through or in the name of its president, acquired the said undivided interest in the said premises through the said sale by the said trustee, in lieu of the said bonds; and, as your orator is advised and believes and so charges, the said bank and its said president had no right or title to the said premises excepting as a mere collateral security to the said notes of the said Bowen Brothers.

6 And your orator further in this behalf saith that at the time of the said bankruptcy the said Bowen Brothers had good right to pay their said indebtedness to the said German-American Bank and to demand and receive the said collaterals, and that this right passed to and became vested in the said assignee in bankruptcy by reason of the said bankruptcy proceedings in that behalf.

Your orator further saith that after the said assignee in bankruptcy was appointed as aforesaid he did, under the orders and directions of the said district court, in bankruptcy, sell to your orator all the right, title, and interest of the said firm in and to all collaterals pledged with said bank by said bankrupts or either of them, under the said sale did assign, transfer, and set over, for a valuable consideration, to your orator by a certain instrument in writing, dated the 15th day of May, 1880, all the right, title, and interest of the said firm which they had at the time of their adjudication as bankrupts, and also which the said assignee acquired by virtue of his appointment as assignee of said bankrupt estate in and to all collaterals pledged by said Bowen Brothers or either of them with the said German-American Bank.

Your orator further says that on the said 15th day of May, 1880, the said bank still held and owned said collateral security to said notes of said Bowen Brothers.

Your orator further saith that the said bank continued to own the said collateral security after the said transfer by the said assignee to your orator until on or about the 9th day of February, 1881, when

the said bank sold said security, to wit, the said last above-described land, to one John C. Dore for and in consideration of the sum of $56,000 paid by said Dore to said bank; that said $56,000, as
7 your orator is informed and believes, was paid as follows: $28,000 in cash on said 8th day of February, 1881, and $28,000 on the 8th day of February, 1882, with six per cent. interest on said amount for one year added thereto.

Your orator further saith that at no time at or before said George W. Smith, as trustee, made said sale of said premises under said trust deed had the said bank sold the said forty bonds, but that the said bank, as your orator is informed and believes, continued to hold possession of said bonds up to the time when the said bank made the said sale to the said John C. Dore, at which time, as your orator is informed and believes, they were turned over to said John C. Dore.

Your orator further saith that said bank received a large sum of money as the proceeds of said sale of said collateral security in excess of the amount due on said notes up to the date of said sale, to which said notes said security was held by said bank as collateral, and your orator claims he is entitled to receive said excess of money by reason of the said assignment to him by the said assignee of said collaterals pledged by said notes as security, and your orator is informed and believes said excess amounts to nearly $20,000.

Your orator further saith that he has within the last few days demanded of said bank an account of the proceeds of said sale, and also at the same time requested said bank to pay over to your orator any excess; that said bank declines to make any account to your orator for the amount of money it had received for said collaterals, and declines to pay to your orator the said moneys it had received in excess of the amount due upon said notes to which the said collaterals were pledged as security, said bank, for the first time, then claiming said excess of moneys it had received as its own separate property.

8 Your orator further saith that he is entitled to the benefit of any rents which hitherto accrued on the said premises, and that said bank is justly chargeable therewith, and your orator believes that the said bank has paid out divers sums for taxes upon said land, but the amount thereof is unknown to your orator, and the said bank does not recognize the right of your orator to have an accounting in the premises.

To the end, therefore, that the defendant, the said The German-American Bank, may, if it can, show to your honors why your orator should not have the relief hereinafter prayed, and that it without oath, its oath being hereby waived, full and true answer make to the premises, and that an accounting be had with reference to said collateral security, and that said bank be decreed to pay to your orator the amount that may be found due to your orator on such accounting, and that your orator may have such further, other, or different relief, if necessary, as may be equitable.

May it please your honors to grant unto your orator the writ of subpœna commanding the said The German-American Bank, by a

certain day and under a certain penalty therein to be inserted, to appear and answer the premises, and further to stand to and abide such order and decree therein as to equity and good conscience may seem meet.

CHARLES L. EASTON.

CHARLES P. CROSBY,
Solicitor and Counsel for Complainant,
160 *Broadway, New York City.*

(Endorsed:) U. S. circuit court, southern district of New York. Charles L. Easton, complainant, against The German-American Bank. Charles P. Crosby, solicitor for complainant, 160 Broadway, New York. U. S. circuit court. Filed June 27, 1884. Timothy Griffith, clerk.

9 Circuit Court of the United States for the Southern District of New York. In Equity.

CHARLES L. EATON *vs.* THE GERMAN-AMERICAN BANK.

The answer of The German American Bank, defendant, to the bill of complaint of Charles L. Easton, complainant

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material and necessary for it to make answer unto, answering, says that it is true; and this defendant admits and states that on the 14th day of April, 1875, James H. Bowen, George S. Bowen, and Chauncey T. Bowen, then partners in trade unde the name and style of Bowen Brothers, being indebted to this defendant in the sum of $27,500 for money which they had borrowed of this defendant, executed and delivered to it their three negotiable promissory notes, bearing date on that day, payable to the order of Chauncey T. Bowen, and endorsed by him in blank; one for the sum of $7,000, payable two months after said date; one for the sum of $7,000, payable three months after said date, and one for the sum of $13,500, payable four months after said date, all with interest from said date, and at the same time, as collateral security for the payment of said notes, deposited with this defendant forty
10 bonds executed by themselves, payable to bearer, of the denomination of $1,000 each, dated the 1st day of April, 1873, and secured by a certain deed of trust upon certain real property situated in the county of Cook, in the State of Illinois, as in said bill of complaint described; that said forty bonds were so deposited as collateral security by said Bowen Brothers, with express authority to the president of this defendant, on non-payment of said notes at maturity, to sell said bonds either at the board of brokers at public auction or at private sale and without notice to said Bowen Brothers of such sale, and to apply the proceeds of such sale to the payment

of the said notes; that said forty bonds were a part of certain one hundred bonds of like tenor and date secured by said trust deed, payable in five years from the date thereof, with interest at the rate of eight per cent. per annum from date, said interest being payable semi-annually and evidenced by coupon notes attached to each of said bonds; that in and by said deed the grantors thereof granted and conveyed said property in fee simple to said George W. Smith, trustee, in trust that in case of default in the payment of said bonds or coupon notes or either of them or any part thereof at the time limited for the payment thereof the said trustee should be authorized to sell the said property or any part thereof, and all right and equity of redemption of the said grantors, their heirs, executors, administrators, or assigns therein, at public vendue upon giving certain notice of such sale, and to execute and deliver to the purchaser or purchasers a deed or deeds of conveyance in fee of the premises so sold. applying the proceeds of such sale or the money, arising therefrom to the payment of the expense of such sale and of the amount due upon said bonds, and that such sale or sales and conveyances so made should be a perpetual bar, both in law and equity, against said grantors,
11 their heirs and assigns, and all other persons claiming the said premises, or any part thereof, by, from, through, or under the said grantors or any of them; that said grantors further stipulated and agreed in said deed of trust that in case of default in any of said payments of principal and interest secured by said bonds, or any part thereof, the whole of said principal sum so secured and the interest at the time of sale should at once, at the option of the holder of any one of said bonds, and without notice to said grantors, become due and payable, and the said premises might be sold in like manner and with the same effect as if said indebtedness had matured in due course, as will more fully and at large appear in said deed of trust when produced.

And this defendant, further answering, says that, default having been made in the payment of several years' interest due on said bonds, upon the application of other holders of a portion thereof, the said George W. Smith, trustee, in pursuance of the terms of the said deed of trust, and after giving notice as thereby required, on the second day of January, 1877, did offer for sale for cash, at public auction, the premises by said deed of trust conveyed to him, and did then and there strike off and sell the same to Wirt Dexter for the sum of $50,000, which was the highest and best bid therefor, and did thereupon, in consideration of the said sum of $50,000 to him in hand paid and the receipt whereof he acknowledged, sell and convey by deed the said premises so sold to the said Wirt Dexter, his heirs and assigns, forever, which last-mentioned deed bears date on said second day of January, 1877, and was duly executed and delivered by said George W. Smith, trustee, to said Wirt Dexter; that said Wirt Dexter, in making said bid and said purchase
12 at said public auction, acted as agent for the holders of said bonds, including this defendant, but this defendant denies that it had agreed with the other holders of said bonds, or any of

them, that at the sale of said premises to be made by said trustee said Wirt Dexter might bid off the said premises for the sum of $50,000, upon an understanding that he should convey to this defendant the undivided $\frac{40}{100}$ of all the estate conveyed by said Bowens to said Smith as trustee, as in said bill of complaint alleged, or that there was any further or other understanding between this defendant and the other holders of said bonds and the said Wirt Dexter than that, in order to protect the interests of said holders of said bonds in said property, the said Wirt Dexter was authorized by them, including this defendant, to bid on and purchase said property at said auction sale for them jointly.

And this defendant, further answering, alleges and states that after deducting the expenses of said sale the balance of said $50,000 purchase-money aforesaid was applied by said George W. Smith, trustee, towards the payment of said bonds—to wit, the sum of $472 was applied towards the payment of each one of said one hundred bonds; that this defendant, accordingly, received of said $50,000, as its proportion applicable to said forty bonds, the sum of $18,880, which this defendant received and applied in part payment of the said indebtedness of $27,500 and interest secured by said three promissory notes of Bowen Brothers aforesaid, and that said $18,880 is the only payment ever made on said notes.

And this defendant, further answering, says that it is advised, believes, and alleges that in and by said sale and conveyance to said Wirt Dexter all the right, title, and interest and equity of
13 redemption of James H., George S., and Chauncey T. Bowen, of every name and nature in or to said premises were effectually barred and foreclosed; that the said Wirt Dexter became the owner in fee of said premises, free from any and all right, title, interest, claim, demand, or equity of redemption of said James H., George S., and Chauncey T. Bowen, as fully and effectually as if they had by warranty deed, for a valuable consideration, made an absolute conveyance thereof to him; and that as against the said James H., George S., and Chauncey T. Bowen, and all persons claiming under them, the said Wirt Dexter, by said sale and conveyance, became such absolute owner of said premises, although as between himself and this defendant and the other holders of said bonds said Wirt Dexter held or might hold such title in trust for them, and that all the rights which said James H., George S., and Chauncey T. Bowen had concerning said sale, as against this defendant, were that the proportionate share of said $50,000 purchase-money received by this defendant as part payment upon its said forty bonds be applied, as it was in fact applied by this defendant, towards payment in part of said three promissory notes.

And this defendant, further answering, says that after the said sale and conveyance of said premises to said Wirt Dexter he conveyed a proportionate undivided share thereof to Henry Rocholl, the president of this defendant; that afterwards, in a certain proceeding or action in chancery for partition, already pending at the time of said sale in the circuit court of Cook county, in the State of Illinois, and to which the said Chauncey T. Bowen, James H. Bowen,

and George S. Bowen were made parties, and said Henry Rocholl was afterwards made a party by a decree of said court made
14 on the 2d day of February, 1880, for said undivided share so conveyed to said Henry Rocholl, a certain definite part, which is correctly described in said bill of complaint, was set off in severalty to said Henry Rocholl, who, in and by said decree, was adjudged to be the owner thereof in fee simple and vested with the legal title thereof in severalty, and that said Henry Rocholl afterwards conveyed said last-mentioned premises to this defendant.

And this defendant, further answering, denies the allegation in said bill of complaint that neither it nor the said Rocholl paid anything for said property, but obtained the benefit thereof solely through the said forty bonds.

And this defendant, further answering, says that it is informed and believes that the said firm of Bowen Brothers, some time after the said sale and conveyance, became and were adjudged bankrupts, as in said complaint alleged, but this defendant is not sufficiently advised concerning the particulars of said proceedings in bankruptcy to admit the same and leaves the plaintiff to produce the proper proof thereof and of the appointment of Robert E. Jenkins, general assignee in bankruptcy, as assignee of said Bowen Brothers, as in said bill of complaint alleged.

This defendant, further answering, denies that at the time of said bankruptcy of said Bowen Brothers, or at any time after the said sale and conveyance of said premises under said deed of trust to said Wirt Dexter, this defendant had acquired or held any interest in said premises in lieu of said bonds or as mere collateral security to said notes of said Bowen Brothers.

And this defendant, further answering, says that it does not know and has not information sufficient to form a belief, and
15 therefore cannot set forth as to its belief or otherwise, whether the assignee in bankruptcy in said bill of complaint mentioned sold to said complainant all the right, title, and interest of said firm of Bowen Brothers in and to all collaterals pledged with this defendant by said bankrupts or either of them, or did for a valuable consideration or otherwise transfer or set over to him all the right, title, and interest of the said firm of Bowen Brothers which they had at the time of their adjudication as bankrupts or which said assignee acquired in and to said collaterals, as in said bill alleged.

And this defendant, further answering, says that by and after said sale and conveyance under said trust deed to said Wirt Dexter this defendant ceased to hold any interest in said land or premises in said trust deed mentioned as collateral security to said notes, but that whatever interest it acquired in said premises by said sale and conveyance to said Wirt Dexter, or through him, it held as purchaser, free, clear, and discharged from any right or equity of redemption, and that the only collateral security which it held after said sale and conveyance towards payment of the balance remaining unpaid of said $27,500 and interest, after applying the proportionate share of said $50,000 purchase-money towards part payment thereof,

consisted of the forty bonds of said Bowen Brothers, divested of said land or premises, as security by said sale.

And this defendant, further answering, says that after holding the said land conveyed to it by said Henry Rocholl as aforesaid for a number of years, and paying large sums of money for the perfection of its title, for taxes, assessments, and otherwise, this defendant, by deed of quitclaim and release, dated the 8th day of February, 1881, conveyed all its right, title, and interest in and to the same to one John C. Dore in said bill of complaint mentioned for
16 the sum of $56,000, as therein stated, and delivered the said forty bonds to said Dore, upon each of which there was endorsed by George W. Smith, trustee as aforesaid, a credit of $472 as proportionate share applicable thereto of the net proceeds of said sale made January 2d, 1877, by him as trustee of the premises described in said deed of trust, said bonds being, at the time of the transfer to said Dore, considered worthless, because said Bowen Brothers were then believed to have been, and had in fact been, discharged in bankruptcy of all their indebtedness, including said bonds and said promissory notes, and said Dore desired possession of said forty bonds in connection with the purchase of said property from this defendant.

And this defendant, further answering, alleges and shows that prior to the alleged sale, assignment, and transfer to said complainant of all right, title, and interest of said firm of Bowen Brothers which they had at the time of their adjudication as bankrupts in and to all collaterals pledged by said Bowen Brothers, or either of them, with this defendant, to wit, on the 13th day of May, 1880, the said assignee in bankruptcy of said Bowen Brothers did, under the orders and directions of the said district court in bankruptcy sitting, undertake to sell, and did, by deed bearing date the 13th day of May, 1880, convey to one Carl F. Hermann all the right, title, and interest of the said James H., George S., and Chauncey T. Bowen in and to said property or premises, by said deed of trust conveyed to said George W. Smith as trustee; that afterwards, on the 5th day of August, 1880, said Hermann, his wife joining, did make conveyance of said premises, by deed of that date, to Josiah H. Helmer; that afterwards, on the 23d of February, 1881, the said Josiah H. Helmer, by his deed of that date, did
17 convey the same premises to James H. Easton, of Decorah, in the State of Iowa; that afterwards the said James H. Easton, a brother of said complainant, as this defendant is informed and believes, appearing by said complainant as his solicitor, on or about the 24th day of February, 1881, filed a bill of complaint in equity in the circuit court of the United States for the northern district of Illinois against this defendant and certain other persons as alleged tenants of said premises, setting forth substantially the same facts which the said complainant in the bill of complaint in this action has alleged (but omitting said alleged assignment and transfer to said complainant, Charles L. Easton), and alleging in lieu thereof the said assignment and deed to Carl F. Hermann and from him, through said Josiah H. Helmer, to said James H. Easton; also omit-

ting the sale of said land by this defendant to said Dore, and praying, on behalf and for said James H. Easton, amongst other things, for an account against this defendant, and that said James H. Easton might be permitted to redeem said land conveyed to this defendant by said Rocholl by payment of what might be found unpaid on said promissory notes of said Bowen Brothers; that afterwards, to wit, on or about the 16th day of March, 1881, the said complainant, Charles L. Easton, then acting as solicitor for said James H. Easton, the complainant in said last-mentioned suit, filed an amended and supplemental bill, therein setting forth that since the filing of said original bill this defendant had caused to be recorded its said quit-claim deed to John C. Dore, thereby conveying to John C. Dore its, right, title, and interest in and to said land for the sum of $56,000; that said Dore had accepted said deed with full knowledge of the fact by him alleged; that the said land was still held as
18 collateral security to said indebtedness of $27,500, and praying, amongst other things, that said John C. Dore might be made a party defendant in said action, and that the said James H. Easton might be permitted to redeem said land as aforesaid.

And this defendant, further answering, says that afterwards, in or about September, 1883, the said action and claim of said James H. Easton to redeem said land was compromised and settled between him and said John C. Dore, whereby said James H. Easton, by quit-claim deed bearing date the first day of September, 1883, conveyed to one Robert Berger, for a valuable consideration, all his alleged right, title, and interest in and to said land conveyed by this defendant to said Dore as aforesaid, said conveyance to said Robert Berger being made for the benefit and in the interest of the said John C. Dore or his assigns, and that thereupon the said action in chancery of said James H. Easton and also a certain suit in ejectment which he had commenced in said circuit court of the United States for the northern district of Illinois concerning the same land were discontinued by him.

And this defendant is advised, believes, and insists that even if, after the said sale and conveyance of January 2d, 1877, there had still remained any right of redemption in said James H. Bowen, George S. Bowen, and Chauncey T. Bowen concerning the said land, and even if the same continued to be held as collateral security as alleged in the complaint in this action and in said complaint of said James H. Easton, such supposed right of redemption was never vested in the said complainant, Charles L. Easton, and that by the conveyances and compromise hereinbefore set forth all the supposed and alleged right of redemption of said James H. Easton and said Charles L. Easton have ceased to exist.

19 And this defendant, further answering, says that it is advised, believes, and insists that the said complainant, Charles L. Easton, is not entitled to any accounting, as prayed for in his said complaint, or to receive or recover from this defendant any part of said $56,000, or any money whatever.

And this defendant, further answering, denies that the said complainant is entitled to the relief or any part thereof in said com-

plaint demanded, and it prays the same advantage of its aforesaid answer as if it had pleaded or demurred to the said bill of complaint; and this defendant prays herewith to be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE GERMAN-AMERICAN BANK,
By H. ROCHOLL, *President.*

SALOMON & DULON,
Defendant's Solicitors.
EDWARD SALOMON,
Of Counsel for Defendant.

(Endorsed:) U. S. circuit court, southern district of New York. In equity. Charles L. Easton ag'st The German-American Bank. Salomon & Dulon, solicitors for def't, 115 B'dway, N. Y. city. Due and timely service of a copy of the within answer and of a notice of entry, a copy of which is hereon endorsed, is hereby admitted. Dated N. Y., Sept. 1, 1884. (S'g'd) Charles P. Crosby, solicitor for complainant. Answer. U. S. circuit court. Filed Sept. 1, 1884. Timothy Griffith, clerk.

Circuit Court of the United States, Southern District of New York.
In Equity.

CHARLES L. EASTON, Complainant,
vs.
THE GERMAN-AMERICAN BANK, Defendant.

The replication of the above-named complainant to the answer of the above-named defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of
20 the said answer, for replication thereunto, says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(S'g'd) CHARLES P. CROSBY,
Complainant's Solicitor, 160 Broadway, N. Y. City.

(Endorsed:) U. S. circuit court. Charles L. Easton *vs.* German-American Bank. Replication. U. S. circuit court. Filed Oct. 6, 1884. Timothy Griffith, clerk.

Testimony on Behalf of the Complainant, Taken by Consent of Parties.

United States Circuit Court for the Southern District of New York.
Equity Branch.

CHARLES L. EASTON, Complainant,

vs.

THE GERMAN-AMERICAN BANK, Defendant.

NEW YORK, *November 18th*, 1884.

Present: The complainant, Mr. Charles L. Easton, in person; and Mr. Edward Salomon, on behalf of the defendant.

HENRY ROCHOLL, being duly sworn, says:

Q. What is your name, age, residence, and occupation?

A. My name is Henry Rocholl; my age is fifty-nine; I reside at 193 State street, Brooklyn; I am the president of the German-American Bank.

Q. Were you president of the German-American Bank on the 7th of February, 1877?

A. Yes, sir.

Q. Will you look at the paper now shown you and state whether the signature is in your handwriting?

A. That is my signature.

Paper offered in evidence by complainants. It is dated February 7, 1877, is addressed to Bowen Brothers, and signed by this witness, marked "Ex. No. 1, Nov. 18, '84, J. C."

Q. Will you look at the document now shown you and state whether that signature is yours?

A. Yes, sir.

COMPLAINANT: We offer the document in evidence. It is dated the same as Exhibit No. 1, and is addressed to Chauncey T. Bowen, and is marked "Ex. No. 2, Nov. 18, '84, J. C."

21 Q. In calling your attention to these two exhibits, marked 1 and 2, of this date, I refer to the forty bonds called real estate bonds of Bowen Brothers, mentioned therein, and will ask you whether these are the particular bonds referred to in this suit.

A. Yes.

Defendant's Counsel Thereupon Called the Witness on Behalf of the Defendant.

Q. Are these three papers I now show you the notes of Bowen Brothers mentioned in the answer in this action?

A. Yes, sir.

Mr. SALOMON: I offer them in evidence on behalf of defendant. A note for $7,000 was here marked Ex. No. 3 of this date, a note

for $13,500 was marked Ex. No. 4 of this date; and note for $7,000, dated April 14, 1875, was here marked Ex. No. 5 of this date.

Q. Please examine the endorsements upon those notes and state in whose handwriting those endorsements are.

A. A clerk of ours; the present cashier.

Q. You mean the endorsement of payment?

A. Yes, sir.

Q. This is in the handwriting of a clerk of the bank?

A. At that time the clerk of the bank; at present, cashier.

Q. About what time?

A. He is now the cashier; I say at that time he was a clerk, and now he is the cashier.

Q. At what time was that?

A. This endorsement was made at the time we received back the bonds from Chicago.

Q. From whom did the bank receive them from Chicago?

A. From Wirt Dexter.

Q. What was his relationship to the bank, concerning the notes?

A. He was trustee for the bondholders, and as such trustee he had bought the lands.

22 Q. When had the notes come into his hands?

A. These notes?

Q. Yes. Was it before the foreclosure sale or after, or don't you recall?

A. That I don't recall. I had the notes when I went to Chicago. They did not come before into his hands, but whether I left them with him that I cannot recall.

Q. When you went to Chicago to attend to the foreclosure sale, I suppose?

A. Yes; that is what I mean.

Q. Do you remember when that was?

A. The sale was on the 2d of January, 1877. I mean, as far as I know, it is the 2d of January, 1877.

Q. You are not absoluely certain about the year?

A. About the year I am not. The sale was the 2d of January, I think, of 1877. It was the 2d of January.

Mr. SALOMON: I offer these notes in evidence with the endorsements.

Cross-examined by Mr. EASTON:

Q. You say you don't know when these endorsements were made?

A. No, sir.

Q. Of the receipts on the back of these respective notes?

A. No, sir; I do not know when they were made.

Q. Did the bank at the time of the foreclosure make the payment of the proceeds referred to as endorsed on these notes?

A. No, sir; the bank did not make those payments.

Q. Were there any payments made?

A. All the payment I made was a payment made to Mr. Smith, the trustee, for the bonds—his expenses.

Q. The trustee named in the trust deed?

23 A. The trustee named in the trust deed; yes, George W. Smith; I paid him $1,220.

Q. That is all the money the bank ever paid?

A. That is all the money the bank ever paid on the land.

Q. Mr. Dexter was your attorney at the time of the sale, representing your interests, or the bank's interest?

A. Yes, sir.

Q. At the time of the sale Mr. Dexter had the forty bonds in his possession, did he not?

A. Yes; Mr. Dexter had the bonds at that time.

Q. On the 2nd of January, 1877?

A. On the 2nd of January, 1877.

Q. Did you not have these notes at the same time?

A. He had the notes there at the same time.

Q. These notes marked Exhibits 3, 4, and 5?

A. Yes, sir.

Q. I call your attention to the power of sale of the bonds referred to in these notes, and will ask you whether prior to the sale of the land on the 2d of January, 1877, the bank had ever sold the bonds under that power of sale referred to in these notes?

A. No, sir.

Q. Has the bank ever made a sale of these bonds under that power?

A. No, sir.

Q. Referred to in these collateral notes?

A. No, sir.

Q. After the foreclosure, on the 2d of January, 1877, what become of the forty bonds and these three notes that you have referred to?

A. They remained in Chicago with Mr. Wirt Dexter.

Q. Did I understand you to say that you were in Chicago at the time of the foreclosure?

A. Yes, sir.

Q. And attended the sale?

A. I was present at the sale.

24 Q. Did you bring back the bonds with you from Chicago and these three notes?

A. The notes I did not bring back with me; I cannot swear as to the bonds.

Q. Where are those bonds now?

A. Delivered to the purchaser of the land.

Q. When were they delivered?

A. 1882.

Q. At the time of this sale to Mr. Dore?

A. A year after.

Q. From the time of the foreclosure, on the 2d of January, 1877, down to the time that you delivered these bonds over to Mr. Dore, will you state where the bonds were?

A. They remained in Chicago with Mr. Wirt Dexter, and then they afterwards came back into our custody.

Q. Were they in your possession at the time that you made the conveyance of this property to Mr. Dore?

A. Yes, sir.

Q. That is, in the possession of the bank, I mean?

A. They were in the possession of the bank.

Q. And were these three notes that have been marked Exhibits 3, 4, and 5 of this date also in your possession?

A. Yes, sir.

Q. At that same time?

A. Yes.

Q. Were there ever any endorsements made upon those bonds?

A. Yes, sir.

Q. Do you recollect what they were?

A. As far as I recollect there was an endorsement on each bond for $472.

Redirect by Mr. SALOMON:

Q. Endorsement of payment, you mean?

A. Endorsement of payment for $472; just the same amount which is endorsed upon the notes.

25 Q. I understood you to say that you went to Chicago for the purpose of attending to the foreclosure sale which took place on the 2nd of January, 1877?

A. Yes, sir.

Q. Now, can you tell more particularly when you placed the forty bonds and these notes that are marked Exhibits 3, 4, and 5 of this date into the hands of Mr. Wirt Dexter; was it before the sale took place or was it after the sale took place?

A. That I don't know; that I cannot say.

Q. Do you remember on what day it was?

A. The 2d of January.

Q. Was it on the 2d of January, on the day of the sale, that you put these papers in the hands of Mr. Dexter?

A. I only arrived there on the afternoon of the 1st.

Q. When did you see Mr. Dexter?

A. I saw him that same afternoon.

Q. Did you take the notes and the bonds with you when you went there?

A. When I went to Chicago?

Q. Yes.

A. Yes, sir.

Q. Then Mr. Dexter had not received them until after you came from Chicago?

A. No.

Q. Did you deliver them to him on the 1st of January or the 2d?

A. That I don't remember.

Q. Can you not more particularly tell by reading over this letter carefully and refreshing your memory by it? I call you attention to the latter portion of the letter. State whether after reading it you have any recollection as to the particular time of the delivery?

A. According to this letter I delivered the notes after the sale.

Q. What is that paper?
A. It is a receipt for having received the notes.
Q. It is a receipt from whom?
A. From Mr. Dexter, of the firm of Walker, Dexter & Smith.
26 Q. Did you receive that receipt at the time when you delivered the notes and the bonds?
A. Yes, sir.
Mr. SALOMON: I offer that in evidence on behalf of defendant.

(Objected to by complainant as immaterial and irrelevant. Marked Ex. No. 6, of this date.)

Q. As to the endorsements on the bonds of the payment of $472 of each bond were those endorsements on there when you got the bonds back from Chicago?
A. Yes, sir.
Q. Can you tell by whom the endorsements purported to have been made?
A. By the original trustee, Mr. George W. Smith.
Q. Trustee under the trust deed?
A. Trustee under the trust deed; yes.
Q. Can you give the substance of the endorsement?
A. No, sir.
Q. Was there any reference had to the foreclosure sale?
A. That I cannot say.
Q. When the bank sold the land to Mr. Dore was there any agreement made concerning the delivery of the bonds?
A. Yes, sir.
Q. State if this is a copy of the agreement, together with the receipt of Mr. Dore, when the bonds were actually delivered to him?
A. Yes; that is a copy of the agreement made with Mr. Dore.
Q. Except that it does not contain your signature?
A. No, sir.
Q. The original, in Mr. Dore's hands, contains your signature?
A. Yes, sir.

Mr. SALOMON: I offer it in evidence on behalf of defendant.

Marked Def't's Ex. No. 7 of this date.

27 Recross by Mr. EASTON:

Q. The bonds and notes referred to in this receipt of Walker, Dexter & Smith, marked Def't's Ex. No. 6, are the same bonds and notes that have been offered in evidence, or, rather, the notes that have been offered in evidence?
A. They are the same notes.
Q. You say that you arrived in Chicago on the 1st of January.
A. On the 1st of January; yes.
Q. And that you immediately saw Mr. Dexter?
A. At least the same day.
Q. Did you tell him you had these forty bonds with you?
A. That I don't know.
Q. He understood that you represented the forty bonds?

A. He understood that I represented the forty bonds.
Q. And you explained to him the notes—the nature of the notes.
A. Yes, sir.
Q. And the title that the bank held them under?
A. Yes.
Q. Then, after the sale he gave you this formal receipt, I suppose?
A. After the sale he gave me this formal receipt.
Q. And you left the securities with him?
A. Yes.
Q. Subsequently they were delivered back to the bank?
A. Subsequently they were delivered back to the bank; yes.
Q. At the date of this receipt in February, 1882, executed by J. C. Dore, had the bank received all of the purchase-money referred to in this agreement?
A. Yes, sir; on the receipt of that money we delivered to him the bonds.

28 (Complainant offers in evidence an exemplified copy of the records of the United States district court for the northern district of Illinois, in bankruptcy, of Bowen Brothers, to wit:)

First. The order of adjudication in bankruptcy of James H., George and S., Chauncey T. Bowen; notice of appointment of assignee; deed to assignee; petition of assignee for leave to sell the assets of the bankrupts; order of court in reference to the same; a portion of the petition of April 27, 1880, referring to the claim of the complainant in this suit; order of court with reference to the same, and a portion of the order of the 13th of May, 1880, which confirmed the sale by the assignee to the complainant.

Marked "Complainant's Ex. No. 8," of this date.

(Defendant's counsel reserves the right to make objections to this record at any time before the final completion of the testimony in the case.)

(Complainant offers in evidence the original bill of sale from the assignee of complainant's claim against the defendant.)

Marked "Complainant's Ex. No. 9," of this date.

(Defendant's counsel offers in evidence certified copy of the trust deed of James H. Bowen and others to George W. Smith, trustee, dated the 1st of April, 1873.)

Marked "Def't's Ex. No. 10, of this date.

Also offers in evidence a certified copy of the deed of George W. Smith, trustee, to Wirt Dexter, dated January 2, 1877.)

Marked Def't's Ex. No. 11, of this date.

Complainant admits that he is the same person who acted as solicitor for the complainant in the suit in equity brought by
29 James H. Easton against the German American Bank and others in the circuit court of the United States for the northern district of Illinois, in February, 1881, the original bill therein being filed on the 24th of February, 1881.

(Defendant's counsel offers in evidence a certified copy of the bill.)
(Objected by complainant as immaterial and irrelevant.)
Marked Def't's Ex. No. 12, of this date.

(Defendant's counsel offered in evidence a certified copy of an amended and supplemental bill in the same case.)
(Same objection by complainant.)
Marked Def't's Ex. No. 13, of this date.

(Defendant's counsel offers in evidence a duplicate original petition for leave to file a supplemental bill.)
(Same objection by complainant as before.)
Marked Def't's Ex. No. 14, of this date.

Adjourned to November 19, 1884, at 10 o'clock.

NOVEMBER 19, 1884—10 a. m.

HENRY ROCHOLL, recalled, and redirect examination by Mr. SALOMON continued:

Q. Please explain what you mean by the expression that the $1,220 was all the money that you paid on the land.
A. I mean by it that that was all the money that I paid on the foreclosure proceedings; the bank paid, besides, money for taxes and assessments and lawyer's fees, and perhaps other things.
30 I want to correct my testimony about having left the bonds in Chicago. From investigation I find that I must have brought the bonds back to New York, because I sent them to Mr. Dexter in February, 1877.
Q. When you sent them to Mr. Dexter, in February, 1877 was the payment on the foreclosure proceedings endorsed upon them already?
A. No.
Q. For what purpose did you send them?
A. I sent them there that endorsements had to be made on the bonds.

Recross by Mr. EASTON:

Q. Do you recollect the date of this letter that I offered in evidence yesterday notifying the Bowen Brothers—it is dated February 7, 1877—in which you notified Bowen Brothers that the bank was about to sell these bonds? Did the bank have those bonds in New York at that time?
A. They had them in New York at that time.
Q. And at that time there had been no endorsements on the bonds?
A. No.
Q. By the trustee under the trust deed?
A. No.
Q. I understand you to say that at the time Mr. Dexter bid off this land, as representing the bank and the other bondholders, he paid no money on the part of your bank?
A. I don't know whether he did or not.

Q. The bank furnished no money?
A. The bank furnished no money.
Q. And the bank never paid any money on account of their portion of the bid?
A. No.
Q. The only money, then, I understand you, the bank has ever paid has been the actual trustee's expenses of the foreclosure and the taxes subsequent to that time on the land?
A. Yes, sir.
31 Q. And their own attorney's fees concerning the matter?
A. Yes, sir.

(Defendant's counsel recalls the witness for further examination.)

By Mr. SALOMON:

Q. Did Mr. Dore, the purchaser of the land from the bank, know at the time of the sale to him of the claim made Mr. Josiah H. Helmer to the land?
A. Yes, sir.
Q. Please state how that knowledge was communicated to him?
A. By me having received a summons in an ejectment case.
Q. A summons in the ejectment suit brought by Josiah H. Helmer against the German-American Bank and others concerning this land?
A. Yes; the papers for the sale were all signed and the money was in my hands, but I would not receive it because I had not delivered the paper, when a director of the bank came and brought me a paper, this summons, which had been left at the bank; when Mr. Dore heard of it he refused to ratify the sale, saying that he preferred to go first to Chicago and see whether he could settle the matter.
Q. On what date was this?
A. On the 19th of February, 1881.
Q. As I understand it, your statement is this: On the 19th of February, 1881, Mr. Dore, the purchaser, was here in the city, the papers for the sale had been drawn, and the transaction was about being completed, when you received through a director of the bank the summons in that ejectment suit, which was communicated to Mr. Dore, whereupon he refused to close bargain, it was not closed, and he went to Chicago for the purpose of ascertaining about it or settling it before purchasing.
A. Yes, sir.
32 Q. Is that correct?
A. That is correct.
Q. How soon afterwards was the bargain closed?
A. Within a fortnight.
Q. He came here again, did he?
A. No; it was closed afterwards; the papers were sent to Chicago.
By Mr. EASTON: You spoke of a summons; was that summons shown to Mr. Dore on that day?
A. Yes, sir.
Q. What became of the summons?

A. I sent it to Mr. Wirt Dexter.
Q. Do you know where it is now?
A. No.
Q. You never have received it back?
A. No.
(S'g'd) H. ROCHOLL.

(Complainant admits that the recording of a deed in the office of the recorder of deeds in any county in the State of Illinois is, in accordance with the statute of the State of Illinois, constructive notice of a claim to title or interest in land by the grantee; and it is further admitted by the complainant that the statutes of Illinois so make such record evidence of such notice.)

(Complaint admits that the forty bonds referred to in this action at the time they were turned over to Mr. Dore as referred to by the witness Rocholl bore an endorsement, the same as set forth in the agreement between the defendant and Mr. Dore, and such indorsements were genuine and made by George W. Smith, the trustee.)

(Complainant admits that the title to the land in question, which Mr. Carl F. Hermann in the answer in this action mentioned purchased from the assignee in bankruptcy of Bowen Bros., was for the use and benefit of Josiah H. Helmer; that said Carl F. Her-
33 mann, his wife joining, did convey that interest to Mr. Helmer, and that Mr. Helmer, while he had that title, commenced certain ejectment suits concerning the land, and that subsequently the ejectment suits were dismissed, and that after the ejectment suits were dismissed Mr. Josiah H. Helmer, for the purpose of enabling a suit to be brought in the United States circuit court for the northern district of Illinois concerning the land in question, conveyed the property to James H. Easton, but that James H. Easton paid Helmer nothing for the conveyance to him, and that James H. Easton had no interest at all in the land; that the title that he held was for the use and benefit of Josiah H. Helmer; that subsequently a settlement was made between Josiah H. Helmer and John C. Dore, through a brother of Josiah H. Helmer, Mr. J. W. Helmer, of the firm of Shortall & Helmer, of Chicago, and that at the request of Josiah H. Helmer Mr. James H. Easton, his wife joining, made a quitclaim deed to Robert Berger, and that the consideration for making that quitclaim deed was paid directly by J. C. Dore to Josiah H. Helmer; that James H. Easton received no money whatever as consideration therefor; that about the date of the conveyances last named the chancery suit referred to in the said United States court by James H. Easton against John C. Dore and the defendant was thereupon dismissed. The quitclaim deed by James H. Easton and wife to Robert Berger was made at the request of John C. Dore as a part of the settlement of the said chancery suit, the conveyance to Robert Berger being made in the interest and for the
34 benefit of John C. Dore; that as a part of the terms of that settlement Josiah H. Helmer also made a quitclaim deed to Mr. Berger of his interest.)

(By this admission it is not admitted by complainant that the ad-

missions made are relevant or material to the issue in this case, but they are simply for the purpose of obviating the necessity of taking depositions, and that complainant expressly objects to the admissibility of the facts contained in foregoing admission on the ground of irrelevancy and immateriality.)

March 4, 1885. The parties again appeared before the same notary before whom the foregoing proceedings were had, the complainant appearing by Charles P. Crosby, his solicitor and counsel, and the defendant by Edward Salomon, its counsel. The defendant's counsel thereupon, pursuant to a former reservation, objected to Complainant's Exhibit No. 8 on the ground that it was not a complete copy of the report of sale and of the order confirming it.

Defendant's counsel then offered in evidence a certified copy of a deed of the defendant, John C. Dore, dated February 8, 1881, which is marked Defendant's Exhibit No. 15, March 4, 1885, J. C.

(Objected to by complainant's counsel as being immaterial and irrelevant.)

Defendant's counsel offered in evidence a certified copy of the records of the United States district court for the northern district of Illinois, in bankruptcy, of Bowen Bros., to wit, portion of the report of the assignee in bankruptcy, containing matters additional to the portion heretofore offered by complainant's counsel;
35 also portions of the order confirming the rule containing the same additional matters; also certificates of discharge of Chauncey T. Bowen, James H. Bowen, and George S. Bowen, dated June 20, 1878, from their debts, which is marked Defendant's Exhibit No. 16, March 4, 1885, J. C.

(Objected to by complainant's counsel as immaterial and irrelevant.)

Defendant's counsel offers in evidence a copy of a declaration and summons in the superior court of Cook county, Ill., in a suit of Josiah H. Helmer against the German-American Bank and others, the summons being dated February 15, 1881, marked Defendant's Exhibit No. 17, March 4, 1885, J. C.

(Objected to by complainant's counsel as immaterial and irrelevant.)

Defendant's counsel offers in evidence certified copies of the following four deeds: Robert E. Jenkins, assignee, to Carl F. Hermann, dated May 13, 1880; deed of Carl F. Hermann and wife to Josiah H. Helmer, dated August 5, 1880; deed of Josiah H. Helmer to Robert Berger, dated September 29, 1883; deed of James H. Easton and wife to Robert Berger, dated September 1, 1883, marked, respectively, Defendant's Exhibits Nos. 18, 19, 20, and 21, March 4, 1885, J. C.

(Said papers severally objected to by complainant's counsel as immaterial and irrelevant.)

The testimony was thereupon closed on both sides.

I, James S. Allen, a notary public, duly commissioned and sworn and authorized to act as such, do hereby certify that the foregoing proceedings were had before me, as therein stated, and that
36 the witness, Henry Rocholl, was by me duly sworn before giving his testimony and has subscribed the same before me.

In witness whereof I have hereunto subscribed my name and affixed my seal of office, at the city of New York, this fourth day of March, 1885.

[NOTARY'S SEAL.] JAMES S. ALLEN,
Notary Public, N. Y. Co.

It is hereby stated and stipulated that the foregoing, together with the exhibits therein mentioned, contains all the testimony and admissions in the above-entitled action now pending in the United States circuit court for the southern district of New York, in equity, wherein Charles L. Easton is complainant and The German-American Bank defendant, and that the same, together with said exhibits, shall be filed in said cause and may be used upon the hearing thereof with the same force and effect as if taken and had before an examiner of said court.

New York, March 5th, 1885.

CHARLES P. CROSBY,
Complainant's Solicitor.
SALOMON & DULAN,
Defendant's Solicitors.

(Endorsed:) U. S. circuit court, southern district of New York. In equity. Charles L. Easton *vs.* The German-American Bank. Evidence. U. S. circuit court. Filed Mar. 7, 1885. Timothy Griffith, clerk.

COMPLAINANT'S "EXHIBIT No. 1."

Henry Rocholl, president; M. F. Reading, cashier.

P. O. box 2869.

THE GERMAN-AMERICAN BANK,
NEW YORK, *Feb'y 7th*, 1877.

Messrs. Bowen Bros., Chicago, Ills.

GENTLEMEN: Please take notice that the sale of the $40,000 real property bonds, which, by our letter of the 24th ulto., you
37 were notified would take place to-day, has been postponed to Wednesday, Feb'y 28th, 1877, at same time and place, unless your notes for $27,500 be paid before that time.

Very respectfully, H. ROCHOLL, *Pr's.*

COMPLAINANT'S "EXHIBIT No. 2."

Henry Rocholl, president; M. F. Reading, cashier.

P. O. box 2869.

THE GERMAN-AMERICAN BANK,
NEW YORK, *Feb'y 7th*, 1877.

C. T. Bowen, Esq., Chicago, Ills.

DEAR SIR: Please take notice that the sale of $40,000 real property bonds, which, by our letter of the 24th ulto., you were notified would take place to-day, has been postponed to Wednesday, Feb'y 28th, 1877, at same time and place, unless Bowen Bros.' notes for $27,500, endorsed by you, be paid before that time.

Very respectfully, H. ROCHOLL, *Pr.*

Defendant's Exhibit "No. 3" is as follows:

$7,000.00. NEW YORK, *April 14th*, 1875.

Two months after date we promise to pay to the order of Chauncey T. Bowen seven thousand dollars, for value received, at the German-American Bank, with interest from date, due June 17th.

BOWEN BROS.

As collateral security for the payment of the above note, and of any and every other notes or liability which may exist on our part
38 to the German-American Bank, we have this day deposited with the said bank ten thousand dollars real property bonds, and do hereby authorize the president of the said German-American Bank, on non-payment of the said note at maturity, to sell said security, either at the board of brokers, at public auction, or at private sale, and without notice to us of such sale, and to apply the proceeds of such sale to the payment thereof.

The said German-American Bank still reserving all its rights against us as maker of said note in case such proceeds shall not be sufficient to pay principal, interest, and charges in full.

New York, April 14th, 1875.

BOWEN BROTHERS.
BOWEN BROS.

Endorsed: Chauncey T. Bowen.

Received on account four thousand seven hundred and twenty ($4,720.00) dollars, being proportionate share of net proceeds of sale made by the trustee of premises described in the deed of trust securing the bonds given as collateral.

Defendant's Exhibit No. 4 is the same as No. 3, except that it is for the amount of $13,500, payable four months after date, and there are twenty thousand dollars real estate bonds as collateral, and the endorsement upon the note is for $9,440.00 paid.

Defendant's Exhibit No. 5, of the same date, is the same as Nos. 3 and 4, except that it is payable three months after date.

Defendant's Exhibit "No. 6" is as follows:

39 OFFICE OF WALKER, DEXTER & SMITH,
ATTORNEYS-AT-LAW, 23 PORTLAND BLOCK,
CHICAGO, *Jan'y* 2*d*, 1876.

Rec'd of H. Rocholl, pres't, the three notes of Bowen Bros., two of them for $7,000 each and one for $13,500, all dated April 14th, 1875, due in 2, 3, & 4 mo's, respectively (the large note being last due), all with interest.

Said notes being secured by bonds as collateral, which in turn are secured by realty, this day sold by trustee & title taken in Wirt Dexter as trustee for all the bondholders.

WALKER, DEXTER & SMITH.

The following is a copy of Defendant's Exhibit No. 7 of November 18, 1884:

Whereas the German-American Bank of the City of New York is about to sell and convey by quitclaim deed all its right, title, and interest in and to certain property in Cook county, in the State of Illinois, to John C. Dore, of the city of Chicago, for the sum of $56,000, of which $28,000 and interest is to be secured by a purchase-money mortgage;

And whereas said bank obtained title to said property by virtue of a sale under a certain deed of trust executed by James H. Bowen and wife, George S. Bowen and wife, and Chauncey T. Bowen to George W. Smith, trustee, dated April 1, 1873, to secure the payment of certain 100 bonds for $1,000 each, executed by said James H. Bowen, George S. Bowen, and Chauncey T. Bowen, dated April 1, 1873, payable five years after date to the bearer, with interest, of which bonds said bank at the time of said sale held and still
40 holds forty, numbered from one to ten and from thirty-six to sixty-five, inclusive, upon each of which said forty bonds there is the following endorsement:

"This bond is entitled to a credit of four hundred and seventy-two ($472) dollars, being proportionate share applicable thereto of net proceeds of sale made January 2, 1877, by me, as trustee of the premises described in the deed of trust securing the same.

"January 2, 1877.

"GEORGE W. SMITH, *Trustee;*"

And whereas the makers of said bonds have been discharged in bankruptcy, and it is believed that no further liability is therefore attached to them by said obligors, but the said John C. Dore desires to obtain possession and ownership of said forty bonds in connection with the purchase of said property from said bank;

Now, therefore, in consideration of the premises, the said German-American Bank does hereby covenant, promise, and agree to and with the said John C. Dore that upon the payment of the balance of said purchase-money and the interest thereon secured by said purchase-money mortgage it will deliver the said forty bonds to said John C. Dore, to be held by him with the same, and with all the rights which said bank now has, or at the time of such delivery may have, in and to the same.

In testimony whereof the president of said bank has hereunto set his hand and affixed the seal of the said bank at the city of New York, this 19th day of February, 1881.

——— ———.

Sealed and delivered in the presence of—

——— ———.

NEW YORK, *February* —, 1882.

Received from the German-American Bank forty (40) real
41 property bonds of James H. Bowen, George S. Bowen, and Chauncey T. Bowen, one thousand ($1,000.00) dollars each, dated April 1st, 1873, due April 1st, 1878, secured by trust deed to George W. Smith on premises in Cook county, Illinois, said bonds being delivered to me in accordance with an agreement, dated February 19th, 1881.

J. C. DORE.

Complainant's Exhibit No. 8, offered in evidence, subject to defendant's objection because it is incomplete, is as follows:

Adjudication.

In the District Court of the United States for the Northern District of Illinois. In Bankruptcy.

SATURDAY, *November* 10, 1877.

Present: The Hon. Henry W. Blodgett, judge.

In the Matter of JAMES H. BOWEN, by whom, etc., and GEORGE S. BOWEN and CHAUNCEY T. BOWEN, against whom, etc.

It appearing that a petition in bankruptcy was filed herein on the 2d day of June last, and that a rule was entered on the fourth day of said June requiring George S. Bowen and Chauncey T. Bowen to show cause why they should not be adjudicated bankrupts, and it also appearing that said George S. Bowen and Chauncey T. Bowen have accepted service of a copy of said rule and have consented to an adjudication of bankruptcy of themselves and of the firm of Bowen Brothers, and the court, being fully advised in the premises, doth find that said James H. Bowen, George S. Bowen, Chauncey T.
Bowen, and the firm of Bowen Brothers have become bank-
42 rupts within the true intent and meaning of the provisions of title 61 Bankruptcy of the Revised Statutes of the United States and the amendments thereto, and they are hereby adjudged bankrupts accordingly. It is thereupon ordered that said petition be referred to H. N. Hibbard, Esq., one of the registers in bankruptcy of this court, to take such proceedings therein as are required by said act, and, further, that said George S. Bowen and Chauncey T. Bowen shall, on or before the 17th day of November instant, at 12 o'clock m., file with said register their schedules, and that they and said James H. Bowen attend before said register on said day, and thenceforth as said register may direct, to submit to such orders

as may be made by said register or by this court relating to said bankruptcy, and, further, until otherwise ordered by the court, the said register shall act upon the matters arising in this case, at his office in Chicago, at such times as he shall fix for that purpose.

Notification of Appointment of Assignee.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the District Court of the United States for the Northern District of Illinois. In Bankruptcy.

In the Matter of JAMES H. BOWEN, GEORGE S. BOWEN, and CHAUNCEY T. BOWEN, Bankrupts.

To Robert E. Jenkins, Esq., of Chicago, in the county of Cook and State of Illinois:

I do hereby certify that you were duly elected assignee of the estate and effects of the above-named bankrupt at the first meeting of creditors, on the 23d day of February, A. D. 1878, subject
43 to approval by the court, and I do further certify that the greater part in value and number of the creditors of said bankrupt who had proved their claims were present or were duly represented at said meeting; and, further, that you are hereby required forthwith to notify the undersigned, a register in bankruptcy of the district aforesaid, of your acceptance or rejection of the said trust.

Dated at Chicago the 23rd day of February, A. D. 1878.

H. N. HIBBARD,
Register in Bankruptcy.

Approved:
H. W. BLODGETT, *District Judge.*

To whom it may concern:

Be it known that I hereby signify my acceptance of the trust of assignee of the estate of the above-named bankrupt this 23rd day of February, A. D. 1878.

R. E. JENKINS, *Assignee.*

Endorsed: Filed February 24, 1881. Wm. H. Bradley, clerk.

Assignment of Bankrupts' Effects.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the District Court of the United States for the Northern District of Illinois. In Bankruptcy.

In the Matter of JAMES H. BOWEN, GEORGE S. BOWEN, and CHAUNCEY T. BOWEN, Bankrupts.

Know all men by these presents that R. E. Jenkins, of
44 Chicago, in the county of Cook and State of Illinois, in said district, has been duly appointed assignee in said matter.

Now, therefore, I, Homer N. Hibbard, one of the registers in bankruptcy of said district, by virtue of the authority vested in me by section 5044 of title LXI Bankruptcy of the Revised Statutes of the United States, do hereby convey and assign to the said R. E. Jenkins, assignee as aforesaid, all the estate, real and personal, of the said James H. Bowen *et als.*, bankrupts aforesaid, including all property of whatever kind of which they were possessed or in which they were interested or entitled to have on the 2d day of June, A. D. 1877, with all their deeds, books, and papers relating thereto, excepting such property as is exempted from the operations of this assignment by the provisions of section 5045 of said Revised Statutes:

To have and to hold all the foregoing premises to the said R. E. Jenkins and his heirs forever; in trust, nevertheless, for the use and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the register, have hereunto set my hand and caused the seal of said court to be affixed this 23d day of February, A. D. 1878.

H. N. HIBBARD,
Register in Bankruptcy.

Endorsed: Filed March 2, 1878. Wm. H. Bradley, clerk.

45 *Assignee's Petition for Sale.*

In the District Court of the United States for the Northern District of Illinois. In Bankruptcy.

In the Matter of JAMES H. BOWEN, GEORGE S. BOWEN, and CHAUNCEY T. BOWEN, Bankrupts.

To the Hon. Henry W. Blodgett, judge of said court:

The petition of the undersigned, Robert E. Jenkins, assignee of the estate of said bankrupts, respectfully represents:

That the said bankrupts schedule a number of tracts or pieces of real estate, all of which are encumbered by taxes, and nearly all of which are also encumbered by mortgages, trust deeds, or judgments.

That there are also some interests of the said bankrupts, or of some one or more of them, in real estate not mentioned in the said schedules, and the full description of which is not yet fully known to your petitioner.

That there are also, belonging to said estate or to the individual estates of the said bankrupts, a number of stale and desperate claims; also certain stocks in incorporated companies which have no market value; also a few small articles of personal property.

That your petitioner believes it to be for the best interests of the said estate that all of said property be sold at public auction after due notice.

Wherefore your petitioner prays that an order may be entered authorizing your petitioner to sell all the assets of whatever kind of which your petitioner shall have knowledge, whether scheduled or

not, and which have not been heretofore sold, belonging to
46 the joint and to the separate estates of the said bankrupts, at public auction, after due notice, in such manner as the court shall direct; and that such other and further orders may be entered as shall be necessary and proper in the premises. And your petitioner will ever pray, etc.

R. E. JENKINS,
Assignee as Aforesaid.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Robert E. Jenkins, being duly sworn, deposes and says that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the statements therein contained are true of his own knowledge, except such as are made on information and belief, and as to these he believes them to be true.

ROBERT E. JENKINS.

Subscribed and sworn to before me this 9th day of March, A. D. 1880.

H. N. HIBBARD,
Register in Bankruptcy.

Endorsed: Filed March 13, 1880. Wm. H. Bradley, clerk.

47 *Order.*

In the District Court of the United States for the Northern District of Illinois. In Bankruptcy.

SATURDAY, *March* 13, 1880.

Present: The Hon. Henry W. Blodgett, judge.

In the Matter of JAMES H. BOWEN *et al.*, Bankrupts.

Upon reading and filing the petition of Robert E. Jenkins, assignee' it is ordered by the court that said assignee sell at public auction all the assets of which said assignee shall have knowledge, whether scheduled or not, belonging to the joint and to the separate estates of the said bankrupts, after giving notice of the time and place of such sale by publication thereof once a week for three consecutive weeks in the Chicago Daily Evening Journal.

In the District Court of the United States for the Northern District of Illinois. In Bankruptcy.

In the Matter of JAMES H. BOWEN, GEORGE S. BOWEN, and CHAUNCEY T. BOWEN, Bankrupts.

To the Hon. Henry W. Blodgett, judge of said court:

The report of the undersigned, Robert E. Jenkins, assignee of the estate of said bankrupt, respectfully represents:

That pursuant to the order of said court entered in said matter on the thirteenth day of March, A. D. 1880, the undersigned, assignee

as aforesaid, gave notice of the sale of certain property here-
48 inafter described by advertisement for three successive weeks in the newspaper called the Chicago Daily Evening Journal, published in the city of Chicago; which said notice was published on three Tuesdays, on the respective dates following, to wit, March 16th, 23rd, and 30th, A. D. 1880, and a copy of such notice, with publisher's certificate, is hereto attached, marked "Exhibit A," and made part hereof.

Notices of such sale were also sent by mail, post-paid, to all known creditors of said estate, and a copy of such notice is attached hereto, marked "Exhibit B," and made a part hereof. Such notices were mailed in Chicago on the 27th day of March, A. D. 1880.

And the undersigned, assignee as aforesaid, further reports that pursuant to such notice and at the time and place therein mentioned, to wit, on Thursday, the 8th day of April, A. D. 1880, commencing at 10 o'clock in the forenoon, at the La Salle street entrance to the building occupied by the United States courts, said building being numbered 157 to 163 La Salle street, in the city of Chicago, in said district, the undersigned, assignee as aforesaid, did offer for sale, at public auction, for cash, to the highest bidder, the following-described property, to wit:

All the assets of said estate mentioned and described and referred to in the said notice of sale; and thereupon, in order to allow parties interested to make further investigation regarding the said assets, the said sale was adjourned to the 21st day of April, A. D. 1880, at the hour of day and place aforesaid, and afterwards printed notice of such adjourned sale was sent by mail, post-paid, to all known creditors of said estate, a copy of which notice is hereto attached and marked "Exhibit C;" such notices were mailed in Chicago
49 on the 10th day of April, A. D. 1880; and the undersigned, assignee as aforesaid, further reports that pursuant to said adjournment and to the notice of such adjourned sale, and at the time and place aforesaid, to wit, on Wednesday, the 21st day of April, A. D. 1880, commencing at 10 o'clock in the forenoon, at the place aforesaid, he did offer for sale and sell at public auction for cash to the highest bidders all his right, title, interest, and claim as assignee as aforesaid—all the right, title, interest, and claim of the said bankrupts, or either of them, which vested in the undersigned as such assignee in and to all the following-described property, subject in all instances to all liens and incumbrances thereon, and to all counter-claims and set-offs in reference thereto, to wit:

Assets of Bowen Bros.

* * * * * * *

Also claim against State Savings Institution for interest in all collaterals pledged with said bank by said bankrupts, or either of them, sold to Charles L. Easton for the sum of ten dollars.

Also claim against Third National Bank, Chicago (except as noted in said notice of sale), sold to Charles L. Easton for the sum of five dollars.

Also same claim against New York State Loan and Trust Company, sold to Charles L. Easton for the sum of five dollars.

Also same claim against German-American Bank of New York, sold to Charles L. Easton for the sum of five dollars.

* * * * * * *

Endorsed: Filed April 27, 1880. Wm. H. Bradley, clerk.

50 *Order.*

In the District Court of the United States for the Northern District of Illinois. In Bankruptcy.

TUESDAY, *April* 27, 1880.

Present: The Hon. Henry W. Blodgett, judge.

In the Matter of JAMES H. BOWEN *et al.*, Bankrupts.

Upon reading and filing the report of auction sales by R. E. Jenkins, assignee, it is ordered by the court that all persons interested in the estate of said bankrupt show cause on or before the sixth day of May next why the sales and each of them mentioned and set forth in said report shall not be confirmed.

Order.

In the District Court of the United States for the Northern District of Illinois. In Bankruptcy.

THURSDAY, *May* 13, 1880.

Present: The Hon. Henry W. Blodgett, judge.

In the Matter of JAMES H. BOWEN, GEORGE S. BOWEN, and CHAUNCEY T. BOWEN, Bankrupts.

It appearing to the court that no cause has been shown in answer to the rule entered herein on the twenty-seventh day of April last in so far as the same refers to the assets of said bankrupts hereinafter set forth and described:

51 It is ordered that said rule be, and the same is, made absolute to that extent; and it is further ordered that the report of sale of the following-described assets of said bankrupts by Robert E. Jenkins, assignee, which report was filed herein on said twenty-seventh day of April last, be, and the same is hereby, approved and confirmed, to wit: All right, title, interest, and claim of said assignee and all the right, title, interest, and claim of the said bankrupts or either of them which vested in such assignee in and to the following-described property, subject in all instances to all liens and incumbrances thereon and to all counter-claims and set-offs in reference thereto, to wit:

Assets of Bowen Bros.

* * * * * * *

Also claim against State Savings Institution for interest in all collaterals with said bank by said bankrupts or either of them to Charles L. Easton for ten dollars.

Also same claim against Third National Bank, Chicago, except as noted in said notice of sale, to Charles L. Easton for five dollars.

Also same claim against New York Loan and Trust Co. to Charles L. Easton for five dollars.

Also same claim against German-American Bank of New York to Charles L. Easton for five dollars.

* * * * * * *

All of said property being sold subject to all liens and incumbrances, said assignee is hereby authorized and directed to convey said property so sold to the purchasers thereof upon receipt of the several sums of money bid by them, respectively, as aforesaid.

52 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true copy of the adjudication, of the notice of appointment of assignee, of the deed to assignee, of the petition of assignee filed March 13, 1880, of the order of court entered of record March 13, 1880, of a portion of the petition of assignee filed April 27, 1880, of the order of court entered of record April 27th, 1880, and of a portion of the order of court entered of record on the 13th day of May, 1880, in the matter of James H. Bowen, George S. Bowen, and Chauncey T. Bowen, bankrupts, in bankruptcy, as appears from the records and original thereof now in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this eighth day of November, A. D. 1884.

WILLIAM H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, Henry W. Blodgett, judge of the district court of the United States for said northern district of Illinois, do hereby certify that William H. Bradley, whose name appears subscribed to the foregoing certificate, is and was at the date of subscribing the same clerk of said court, duly appointed and qualified; that his certificate is in due form of law, and that the said signature purporting to be his is his genuine signature.

53 Witness my hand, at Chicago, this 8th day of November, A. D. 1884.

H. W. BLODGETT,
District Judge.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify that I am well acquainted with the handwriting of Henry W. Blodgett, whose name is subscribed to to the foregoing certifiate, and that the same is his genuine signature, and that he was at the time of signing the same and is now district judge of the United States for said northern district of Illinois, duly appointed, qualified, and commissioned, and that as such full faith and credit are and of right ought to be given to all of his official acts.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at my office, in Chicago, in said district, this 8th day of November, A. D. 1884.

WM. H. BRADLEY, *Clerk.*

COMPLAINANT'S "EXHIBIT No. 9."

Know all men by these presents that I, Robert E. Jenkins, assignee in bankruptcy of James H., George S., and Chauncey T. Bowen, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, for and in consideration of the sum of fifty-two and $\frac{50}{100}$ dollars, lawful money of the United States of America, to me, as assignee aforesaid, in hand paid at or before
54 the ensealing and delivery of these presents by Charles L. Easton, also of the city of Chicago, county of Cook and State of Illinois, party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and delivered, and by these presents do grant, bargain, sell, and deliver, unto the said party of the second part all the right, title, and interest of the said Bowen Bros., bankrupts as aforesaid, which they had on the second day of June, A. D. 1877 (the day proceedings in the matter of said bankruptcy commenced), and all the right, title, and interest which the said party of the first part acquired by virtue of his appointment as assignee of said bankrupts' estate in and to all those certain uncollectible and desperate debts, claims, demands, judgments, promissory notes, or choses in action of every nature and description, which are mentioned and specified below:

Claim against State Savings Institution for interest in all collaterals pledged with said bank by said bankrupts or either of them.

Same claim against Third National Bank of Chicago.

Same claim against New York State Loan and Trust Co., of New York.

Same claim against German-American Bank of New York.

Two certain promissory notes, signed by Parmenter and Leake, for the sum of $400, upon which $204 has been paid, now in hands of A. L. Sawyer, attorney, at Menominee, Mich.

It is expressly understood and agreed, however, that the said party of the second part acquires hereby no title or claim to the moneys collected by said party of the first part prior to the sale here-
55 inafter mentioned, and that no compromise or settlement by the party of the first part with any debtor of said bankrupts' estate shall be in any manner affected thereby.

This transfer is made pursuant to a sale of the claims and demands aforesaid, which sale was duly confirmed by order of the district court of the United States for the northern district of Illinois, entered in the matter of said bankruptcy on the 13th day of May, A. D. 1880.

And it is expressly understood and agreed that said claims and demands are sold and transferred hereby subject to all set-offs and counter-claims, and that said party of the second part shall collect the same at his own expense, and shall keep and save harmless the said party of the first part from all cost and expense of such collection:

To have and to hold the said goods, chattels, and property unto said party of the second part, his heirs, executors, administrators, and assigns, to and for his and their own proper use and behoof forever.

In witness whereof I, the undersigned, assignee as aforesaid, have hereunto set my hand and seal the fifteenth day of May, in the year one thousand eight hundred and eighty.

ROBERT E. JENKINS, [SEAL.]
Assignee of the Estate in Bankruptcy of said Bowen Bros., Bankrupts.

56 DEFENDANT'S EXHIBIT No. 10.

NOVEMBER 18, 1884.

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and seventy-three, between James H. Bowen and Caroline A. Bowen, his wife; George S. Bowen and Julia E. Bowen, his wife, and Chauncey T. Bowen, widower, of the county of Cook and State of Illinois, party of the first part, and George W. Smith, of said county, party of the second part, witnesseth:

Whereas the said James H. Bowen, George S. Bowen, and Chauncey T. Bowen have executed their certain joint and several bonds of even date herewith for the sum of one thousand dollars each and numbered from one to one hundred, inclusive, payable to the bearer thereof in five years from the date thereof, which will be on the first day of April, A. D. 1878, at the American Exchange National Bank, in the city of New York, with interest at the rate of eight per centum per annum from the date thereof until the same shall be payable at the same place, said interest being payable semi-annually on the first day of October and April in each and every year, and said interest payments until the maturity of said bonds being further specified by ten coupon notes attached to each of said bonds and each series thereof numbered from one to ten, inclusive, such coupon notes being for the sum of forty dollars each, and said bonds constituting a series of the like tenor and date, which amount in all to the sum of one hundred thousand dollars:

57 Now, therefore, the said party of the first part, for the purpose of securing the prompt payment of the said bonds and the interest thereon in whosoever hands the same may be, and in

consideration of one dollar to them in hand paid by said party of the second part, the receipt whereof is hereby confessed, have granted, bargained, and sold, and hereby do grant, bargain, sell, and convey, unto the said party of the second part, his successors, in trust, forever the undivided two-thirds part of all those certain tracts or parcels of land situate in the county of Cook and State of Illinois and known and described as follows—that is to say:

First. The east half of the northeast quarter of section thirty-one (31), township thirty-eight (38) north, of range fifteen (15) east, of the third principal meridian, excepting five (5) acres, described as follows:

Commencing twenty (20) rods west from the northeast corner of said quarter section; thence running south parallel to the east line of said quarter section forty (40) rods; thence running west twenty (20) rods; thence north forty (40) rods to section line; thence running east along the section line twenty (20) rods to the place of beginning.

Second. The southwest fraction of section twenty-nine (29), in twenship thirty-eight (38) north, range fifteen (15) east, of the third principal meridian.

Third. The west fractional half of section thirty-two (32), in township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian:

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, interest, 58 claim, and demand whatsoever, in law as well as in equity, which the said party of the first part have in and to the premises hereby conveyed unto the said party of the second part, his successors, in trust, forever; in trust, nevertheless, to wit:

In trust that in case of default in payment of the said bonds or notes, or either of them, or of any part thereof, at the time and in the manner and at the place above limited and specified for the payment thereof, or in case of waste or non-payment of taxes or assessments as hereinafter provided, or in case of breach of any of the covenants or agreements herein contained, then and in such case, on the application of the legal holder of said bonds, or any or either of them, it shall and may be lawful for the said party of the second part, his successors, in trust, either in person or by his or their attorney duly constituted, to enter upon, possess, hold, and enjoy the above-granted premises, and either with or without such entry, after having given notice of sale in a newspaper published in the county where the said premises are situate twenty days before such sale, to sell the said premises or any part thereof and all the right and equity of redemption of the said party of the first part, their heirs, executors, administrators, or assigns therein, at public vendue, at either door of any building then used for a court-house, in the said county of Cook, to the highest bidder, for cash, at the time appointed in such advertisement, or to adjourn the sale from time to time at discretion, and upon the making of such sale or sales the said party of the first part do hereby authorize and empower the said

party of the second part, his successors in trust, in his or their own name, or by his or their attorney, to execute and deliver to the purchaser or purchasers a deed or deeds of conveyance in fee of the premises sold by virtue hereof, and all the recitals
59 of such deed or deeds setting forth the fact of due notice, advertisement, and sale, and any and all such other facts and statements as may be proper to evidence the legality of such sale or sales or conveyance or conveyances, and that the same, have been duly made in all respects so as to meet the requirements herein contained or arising in law, and necessary to convey a good title, shall be taken and considered *prima facie* evidence of all such facts and matters set forth in such recitals, and the proceeds of such sale or money arising therefrom the said party of the second part or his successors in trust shall apply to the payment of (first) expenses of advertising, selling, and conveying as aforesaid, including the sum of one thousand dollars for attorney's fees, and (second) the amount due upon the bonds according to their tenor and effect, (third) rendering the overplus, if any there shall be, to the said party of the first part or their assigns, at the office of said party of the second part, in the county of Cook, and in case of the foreclosure of this deed of trust, by proceedings in court, the said party of the second part may recover the sum of one thousand dollars as his solicitor's fee, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money; which sale or sales and conveyances so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under the said party of the first part, or any of them.

And the said James H. Bowen, George S. Bowen, and Chauncey T. Bowen hereby covenant and agree with the said party of the second part, his successors in trust, that they are seized in fee of the
60 said premises, and have good right to convey the same as aforesaid; that they are free from all incumbrance, and they will forever warrant and defend the same against all lawful claims.

The said James H. Bowen, George S. Bowen, and Chauncey T. Bowen further covenant and agree with the party of the second part, his successors in trust, to pay the said indebtedness as evidenced by said bonds and notes, with the interest thereon, at the times, places, and in the manner aforesaid, and to pay all assessments and taxes for which the said premises may be or may become liable, and in default of so doing the party of the second part may pay the same or purchase any certificate of sale for any general or special tax or assessment, and the amount so paid shall be deemed a part of the debt hereby secured and be at like interest and be subject to all the provisions and conditions herein contained; in like manner shall the amount of any other necessary expense incurred, in the discretion of the said party of the second part, in and about, or for the protection of said property become a part of said debt and be at like interest and be collected in like manner.

And it is stipulated and agreed that in case of default in any of

said payments of principal or interest as aforesaid, or any part thereof, or of a breach in any of the covenants or agreements herein, then and in that case the whole of said principal sum hereby secured and the interest to the time of sale, according to the tenor and effect of said indebtedness, shall and may at once, at the option of the holder of any one of said bonds and without notice of said party of the first part, become due and payable, and the said premises be sold in like manner and with the same effect as if the said indebtedness had matured in due course.

61 And, further, that in case of the death, resignation, or refusal to act of the said Smith, or other inability of said party of the second part, then Henry W. Bishop, of the said city of Chicago, shall be, and is hereby, appointed and made successor in trust herein, with like power and authority as the said party of the second part hereby has in and about the management of the said trust estate, and the said premises shall become vested in such new trustee accordingly.

And the said party of the first part hereby expressly waive and release unto the said party of the second part and his successors all rights and benefits they may be entitled to under and by virtue of an act of the Legislature of the State of Illinois entitled "An act to exempt homesteads from sale on execution," approved February eleventh, one thousand eight hundred and fifty-one, and an act of said Legislature amendatory thereto entitled "An act to amend an act to exempt homesteads from sale on execution," approved February seventeenth, one thousand eight hundred and fifty-seven, and all other existing laws concerning the exemption of homesteads.

In witness whereof the said party of the first part have hereunto set their hands and seals on the day and in the year first above written.

JAMES H. BOWEN. [SEAL.]
CAROLINE A. BOWEN. [SEAL.]
GEORGE S. BOWEN. [SEAL.]
JULIA E. BOWEN. [SEAL.]
CHAUNCEY T. BOWEN. [SEAL.]

62 STATE OF ILLINOIS, } *County of Cook,* } ss.:

I, Benjamin F. Guyton, a notary public in and for the county of Cook and State of Illinois, and residing in said county, do hereby certify that James H. Bowen and Caroline A. Bowen, his wife; George S. Bowen and Julia E. Bowen, his wife, and Chauncey T. Bowen, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal this 21st day of April, A. D. 1873.

[NOTARIAL SEAL.] BENJAMIN F. GUYTON,
Notary Public.

(No. 102,456.)

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 14th day of May, A. D. 1873, as document No. 102,456, and recorded in book 234 of records, at page 357.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this eighth (8) day of July, A. D. 1884.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

63 DEFENDANT'S "EXHIBIT NO. 11."

(Nov. 18, '84.)

This indenture, made this second day of January, A. D. 1877, between George W. Smith, of the city of Chicago, county of Cook and State of Illinois, party of the first part, and Wirt Dexter, of the same place, party of the second part, witnesseth:

That whereas by their certain deed of trust dated the first day of April, A. D. 1873, and recorded in the office of the recorder of deeds of Cook county and State of Illinois, in book 234 of records, at page 357, James H. Bowen, Caroline A. Bowen, his wife; George S. Bowen, Julia E. Bowen, his wife, and Chauncey T. Bowen granted, bargained, sold, and conveyed to the party of the first part hereto the prmises in said deed of trust, and herein described as follows, to wit:

The undivided two-thirds (⅔) part of all those certain tracts or parcels of land situate in the county of Cook and State of Illinois and known and described as follows—that is to say:

First. The east half of the northeast quarter of section thirty-one (31), township thirty-eight (38) north, range fifteen east, of the third principal meridian, excepting five (5) acres described as follows:

Commencing twenty (20) rods west from the northeast corner of said quarter-section, thence running south parallel to the east line of said quarter-section forty (40) rods; thence running west twenty (20) rods; thence north forty (40) rods to section line; thence
64 running east along the section line twenty (20) rods to the place of beginning.

Second. The northwest fraction of section twenty-nine (29), in township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian.

Third. The west fractional half of section thirty-two (32), in township thirty-eight (38) north, range fifteen (15) east, of third principal meridian—in trust to secure the payment of one hundred joint and several bonds described therein of the said James H. Bowen, George S. Bowen, and Chauncey T. Bowen, of even date with said deed of trust, for the sum of one thousand dollars each, payable to the bearer thereof in five years after their date, together with interest thereon at the rate of eight per centum per annum, payable semi-annually, according to the tenor of ten interest coupons attached to each of said bonds, each series of coupons representing the half-yearly in-

terest upon the bond to which they were attached; and whereas it was, among other things, provided in and by said deed of trust that in cases of default in any of the payments of said principal moneys or the interest thereon or any part thereof, then and in that case the whole of said principal sums secured by said deed of trust, together with the interest thereon, should at once, at the option of the holder of any one of said bonds, become due and payable and said premises be sold in like manner and with the same effect as if the said indebtedness had matured in due course; and whereas it was, among other things, provided in and by said deed of trust that in case of default in the payment of said bonds or either of them or any part thereof, then, on the application of the legal holder of said bonds or any or either of them, it should and might be
65 lawful for the party of the first part hereto to sell and dispose of the premises hereinbefore described, and all the right, title, benefit, and equity of redemption of the said James H. Bowen, Caroline A. Bowen, his wife; George S. Bowen, Julia E. Bowen, his wife, and Chauncey T. Bowen, their heirs or assigns therein, at public auction, at either door of any building then used for a court-house, in the county of Cook and State of Illinois, for the highest price the same would bring in cash, twenty days' public notice having been previously given of the time and place of such sale by advertisement in a newspaper at that time published in said county of Cook, and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance of the premises sold; and whereas default was made in the payment of the first seven installments of interest becoming due upon thirty-two of said bonds, the same being held by the State Savings Institution of Chicago; and whereas the said legal holder of the thirty-two aforesaid of said bonds, to wit, the said the State Savings Institution of Chicago, elected to declare and did declare the whole of the moneys secured to be paid by said deed of trust, and evidenced by the said one hundred bonds and interest coupons attached thereto, to be due and payable; and whereas default was made in the payment of the whole of said principal moneys and the interest thereon; and whereas the said legal holder of thirty-two of said bonds, to wit, the said the State Savings Institution of Chicago, did make application to the party of the first part hereto to sell the premises in said deed of trust mentioned in accordance with the provisions of said deed of trust; and whereas thereupon, and at the request of the said the State
66 Savings Institution of Chicago, the party of the first part hereto did, on the twenty-third day of November, A. D. 1876, cause a notice in form, as required by said deed of trust, to be published in the Chicago Post, a newspaper then published in the city of Chicago, county of Cook and State of Illinois, that the premises in said deed of trust and hereinbefore described would, on the second day of January, A. D. 1877, at the hour of ten o'clock in the forenoon of said day, be sold at public auction at the westernmost north door of the court-house, on Adams street, in the city of Chicago, in the county of Cook and State of Illinois, for the highest and best price the same would bring in cash, in the exercise of the power in said

deed of trust given and in pursuance of the provisions thereof, which said notice was published in said newspaper for the time provided by and in accordance with the requirements of said deed of trust and the statutes in such case made; and whereas also on the second day of January, A. D. 1877, at the hour of ten o'clock in the forenoon of said day, at the westernmost north door of the court-house, on Adams street, in the city of Chicago, county of Cook and State of Illinois, the party of the first part hereto did make public proclamation that a sale would be had, and, after reading aloud the aforesaid notice, did offer for sale for cash, at public auction, the premises in said deed of trust and hereinbefore described, and did then and there offer the same for sale in separate parcels, and did then and there solicit bids upon the whole of such land, and also upon any separate parcel or parcels thereof, and, upon request, did offer the whole of the premises aforesaid, except the following-described parcel, to wit:

67 An undivided two-thirds ($\frac{2}{3}$) part of that part of the southwest fractional quarter ($\frac{1}{4}$) of fractional section thirty-two (32) aforesaid and described as follows, to wit: Commencing at the southwest corner of said fractional section thirty-two (32); thence east along and with the south boundary line of said section one hundred and fifty-five (155) feet to a stone corner; thence north at right angles to said south boundary line of said section eleven hundred and seven and five-tenths ($1,107\frac{5}{10}$) feet to a street corner; thence west at right angles with the last-described line one hundred and fifty-five (155) feet to a stone corner on the west boundary line of said section thirty-two (32); thence south along and with said west boundary line of said section to the place of beginning, the same being a rectangular piece of ground containing three and ninety-four hundredths ($3\frac{64}{100}$) acres of land, more or less—and received no request for the offering for sale of said premises altogether or in any other or different parcels; and it appearing for the interest of all parties concerned to offer and sell said premises as so requested, the party of the first part did then and there offer for sale all of the said premises, except the parcel last-above described, and thereupon Wirt Dexter did offer and bid therefor the sum of $50,000, which was the highest and best bid therefor, and the same were then and there struck off to the said Wirt Dexter for the sum of fifty thousand dollars, that being the highest and best bid therefor, and he having bid therefor the sum last named, and being the highest and best bidder therefor, and the said Wirt Dexter was thereupon declared the purchaser thereof:

Now, therefore, in consideration of the premises and of the sum of fifty thousand dollars so as aforesaid bid for said premises and to him in hand paid, the receipt whereof is hereby acknowledged, the

68 party of the first part hereto has remised, released, quit-claimed, conveyed, aliened, and confirmed, and by these presents does remise, release, quit-claim, convey, alien, and confirm, to the said Wirt Dexter, party of the second part hereto, the following-described premises mentioned in the said deed of trust—that is to say, the undivided two-thirds part of all those certain

tracts or parcels of land situate in the county of Cook and State of Illinois and known and described as follows—that is to say:

First. The east half of the northeast quarter of section thirty-one (31), township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian, excepting five (5) acres, described as follows: Commencing twenty (20) rods west from the northeast corner of said quarter section, thence running south parallel to the east line of said quarter section forty (40) rods; thence running west twenty (20) rods; thence north forty (40) rods to section line; thence running east along the section line twenty (20) rods to the place of beginning.

Second. The southwest fraction of section twenty-nine (29), in township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian.

Third. The west fractional half of section thirty-two (32), in township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian, excepting therefrom the following-described tract—that is to say: An undivided two-thirds ($\frac{2}{3}$) part of that part of the southwest fractional quarter ($\frac{1}{4}$) of fractional section thirty-two (32) aforesaid described as follows, to wit:

Commencing at the southwest corner of said fractional section thirty-two, thence east along and within the south boundary line of said section one hundred and fifty-five (155) feet to a stone
69 corner; thence north at right angles to said south boundary line of said section eleven hundred and seven and five-tenths ($1{,}107\frac{5}{10}$) feet to a stone corner; thence west at right angles with the last-described line one hundred and fifty-five (155) feet to a stone corner on the west boundary line of said section thirty-two; thence south along and with said west boundary line of said section to the place of beginning, the same being a rectangular piece of ground, containing three and ninety-four hundredths ($3\frac{94}{100}$) acres of land, more or less, and all right, title, benefit, and equity of redemption which said James H. Bowen, Caroline A. Bowen, his wife, George S. Bowen, Julia E. Bowen, his wife, and Chauncey T. Bowen, their heirs or assigns, or any of them may at any time have had therein, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and any and every part thereof; to have and hold the same as fully and absolutely as the party of the first part can by virtue of the power and authority in him and by said deed of trust vested convey the same unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the party of the first part has hereunto set his hand and seal the day and year first above written.

GEORGE W. SMITH, *Trustee.* [SEAL.]

70 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Robert A. Childs, a notary public in and for and residing in the county of Du Page and State aforesaid, do hereby certify that George W. Smith, who is personally known to me to be the same person who executed the foregoing instrument, appeared before me this day in person and acknowledged the same to be his free act and deed, and that he executed the said instrument for the uses and purposes therein set forth.

Given under my hand and notarial seal this twelfth day of March, A. D. 1877.

[NOTARIAL SEAL.] R. A. CHILDS,
Notary Public.

(No. 126,361.)

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 16th day of March, A. D. 1877, as document No. 126,361, and recorded in book 731 of records, at page 436.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this 8th day of July, A. D. 1884.

JAMES W. BROCKWAY, *Recorder.*

71 DEFENDANT'S "EXHIBIT No. 12."

In the Circuit Court of the United States for the 7th Circuit and Northern District of Illinois. In Chancery.

To the honorable judges of said circuit court, in chancery sitting:

James H. Easton, of Decorah, Winneshiek county, State of Iowa, and a citizen of the said State of Iowa, brings this his bill of complaint against the German-American Bank, a corporation created and doing business under the laws of the State of New York and having its principal place of business in the city of New York as a citizen thereof, and Charles Benson, J. P. Peterson, John Thurman, Charles Wicklow, Henry Rippe, Charles Gofen, and Peter Miller, residents of the town of Hyde Park, in the State of Illinois, and citizens of said State, defendants herein.

And thereupon your orator complains and says that heretofore, to wit, on the 14th day of April, 1875, James H. Bowen, George S. Bowen, and Chauncey T. Bowen were partners trading at Chicago under the name and style of Bowen Brothers, and that on the day and year last aforesaid they borrowed divers sums of money of the said The German-American Bank, amounting in all to the sum of $27,500, represented by three promissory notes, one for $13,500, one for $7,000, and the other for $7,000; that to secure the said indebtedness the said Bowen Brothers lodged with the said German-

American Bank as collateral thereto forty (40) bonds, of the
72 denomination of one thousand dollars each, dated the 1st day of April, 1873, which said bonds were also secured by a certain deed of trust made by the said James H., George S., and Chauncey T. Bowen to George W. Smith upon certain property and real estate situate in the county of Cook, in the district aforesaid, to wit:

First. The east half of the northeast quarter of section thirty-one (31), township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian, excepting five (5) acres described as follows: Commencing twenty rods west from the northeast corner of said quarter-section, thence running south parallel to the east line of said quarter-section forty (40) rods; thence running west twenty (20) rods; thence north forty rods to section line; thence running east along the section line twenty rods to the place of beginning.

Second. The southwest fraction of section twenty-nine (29), in township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian.

Third. The west fractional half of section thirty-two (32), in township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian.

In which said deed of trust was contained a power of sale in case of default to pay the principal or interest of said bonds, and in and by said deed of trust was also secured sixty (60) other bonds, of the denomination of one thousand dollars each, held by divers parties.

That afterwards such proceedings were had under the said deed of trust to the said George W. Smith that the holders of the said bonds, to wit, the said German-American Bank, as holder of said forty bonds as collateral security as aforesaid, and divers other
73 persons holding other of the said bonds, that they, the said bondholders, agreed between themselves that at the sale of the premises to be made by the said trustee, George W. Smith, Wirt Dexter might bid off the said premises for the sum of fifty thousand dollars ($50,000) in and for the interest of the said bondholders upon an understanding that he should convey to the said bank the undivided $\frac{40}{100}$ of all the estate conveyed by the said Bowens to said Smith as trustee, and that said Dexter should convey to the other bondholders their proportionate share according to the number of bonds held of the said trust property bid in by him; and your orator, in fact, says that the said agreement made between the said Dexter and the said bondholders was, in fact, afterwards, to wit, on or about the second day of January, 1877, carried out, in this, that on the day and year last aforesaid said trustee, in execution of the powers contained in said deed of trust, sold the said premises to said Wirt Dexter upon and for a bid of $50,000, and said Dexter did, amongst other things, convey to Henry Rocholl, the president of said bank, for the use and benefit of said bank, an undivided $\frac{40}{100}$, or thereabouts, of all the estate so conveyed to said Smith as trustee; and after a partition of the said premises, as hereinafter alleged, said

Rocholl conveyed the same as divided to and unto the said German-American Bank.

And your orator, in fact, says that neither the said bank nor the said Rocholl paid anything for the said property, but obtained the benefit thereof solely through the said forty bonds.

Your orator further saith that at the time the said sale by the said trustee was made, or about that time, there was pending in the circuit court of Cook county a certain bill for partition, wherein
74 said Rocholl was a party and wherein such proceedings were had that the said interest and title conveyed to said Rocholl as aforesaid as undivided as aforesaid was set off and partitioned in severalty by the order and decree of the said circuit court, wherein and whereby was set off in severalty in that behalf for the undivided interest represented by said Rocholl the following-described premises, to wit: The south half of the northeast quarter of the northeast quarter of said section thirty-one (31); also a strip of land three hundred and thirty feet in width from north to south off from the south half of the northwest quarter of said fractional section thirty-two (32), and extending from east to west from the west line of said section thirty-two (32) to the said shore of Lake Michigan; also the north half of the north half of the southwest quarter of said fractional section thirty-two (32), and also the south half of the north half of the southwest quarter of said fractional section thirty-two (32), excepting the west five (5) acres thereof, as by reference to said decree entered at the January term, A. D. 1880, of said circuit court will more fully appear.

That afterwards, to wit, on the — day of November, 1880, said Rocholl conveyed the said last-described premises set off to him in severalty as aforesaid to the said German-American Bank, as by reference to a deed in that behalf recorded in the recorder's office of Cook county will more fully and at large appear.

Your orator further saith that after the said premises were set off in severalty as aforesaid all of the other defendants hereinbefore named or some of them have become tenants of the said last-described premises under and by permission of said bank, and
75 they or some of them have agreed to pay and do pay to the said bank divers sums of money as rent for the said premises.

Your orator further showeth unto your honors that shortly after the said sale by the said trustee and in or about the month of June, 1877, the said firm of Bowen Brothers became and were adjudged bankrupts under the bankrupt law of the United States of America then in force by the district court of the United States in and for the northern district of Illinois aforesaid; that such proceedings were afterward had that, to wit, on the — day of January, 1878, Robert E. Jenkins, Esq., was appointed general assignee in bankruptcy of the property and estate of the said Bowen Brothers.

And your orator saith that at the time last aforesaid the said notes of the said Bowen Brothers to the said German-American Bank were held and owned by the said bank, and that said bank had then, through or in the name of its president, acquired the said undivided

interest in the said premises through the said sale by the said trustee in lieu of the said bonds; and, as your orator is advised and believes and so charges, the said bank and its said president had no right or title to the said premises, nor have they since acquired any excepting as a mere collateral security to the said notes of the said Bowen Brothers.

And your orator further in this behalf saith that at the time of the said bankruptcy the said Bowen Brothers had good right to pay their said indebtedness to the said German-American Bank and to demand and have a conveyance of the said property, and that this right passed to and became vested in the said assignee in bankruptcy by reason of the said bankruptcy proceedings in that behalf.

76 And your orator further saith that after the said assignee in bankruptcy was appointed as aforesaid he did, under the orders and directions of the said district court in bankruptcy sitting, sell all the right, title, and interest of the said firm in and to the said premises then undivided, but afterwards divided, as hereinbefore alleged, and under the said sale did convey the same for a valuable consideration to Carl F. Hermann by deed bearing date the 13th day of May, 1880, and since recorded in the recorder's office of Cook county, as by reference to the said deed will more fully appear; that afterwards, to wit, on the 5th day of August, 1880, said Hermann, his wife joining, did make conveyance of the said premises by deed of that date to Josiah H. Helmer, which was afterwards duly recorded in Cook county, as by reference thereto will more fully appear; and that afterwards, to wit, on the 23d day of February, 1881, the said Josiah H. Helmer, by his deed of that date, did convey the said premises to your orator, as by reference to the said deed will more fully appear.

And your orator further in this behalf saith that while the said title remained in said Helmer he caused to be tendered to the said German-American Bank the moneys due upon the said notes of the said Bowen Brothers in or about the month of September, A. D. 1880, to wit, at the city of New York; that said Helmer was then willing and ready to pay the same, and in that behalf desired the said bank to take the said moneys and convey to him the said land, but the said bank refused all these the reasonable requests of the said Helmer in that behalf.

Your orator saith that he has now acquired all the interest obtained by the said assignee in bankruptcy and by the said Helmer in the premises, and he claims to have good right to redeem

77 the same, and he is ready and willing to do so upon such reasonable terms as may be deemed equitable.

Your orator further saith that he is entitled to the benefit of the rents hitherto acquired upon said premises, and that the said bank is justly chargeable therewith, and your orator believes that the said bank has paid out divers sums for taxes, but the amount thereof is unknown to your orator, and the said bank does not recognize the right of your orator to have an accounting in the premises.

To the end, therefore, that the defendants may, if they can, show to your honors why your orator should not have the relief hereinafter prayed, and that they may, without oath, their several oaths being hereby waived, full and true answer make to the premises, and that an account may be taken of what is due from the several tenants and occupants of the said land already paid or which may during the pendency of this suit be paid, and that it may be ascertained how much is due to the said German-American Bank on account of the said indebtedness or on account of taxes or any other matter or thing, and that your orator may be permitted to redeem the said premises upon such terms, reasonable conditions, and payments as may be just in the premises, and that your orator may have such further, other, or different relief, if necessary, as may be equitable—

May it please your honors to grant unto your orator the writ of subpœna, commanding the said defendants and each of them, by a certain day, etc., to appear and answer the premises, etc., as to equity and good conscience may seem meet.

JAMES H. EASTON,
By CHARLES L. EASTON,
His Solicitor.
F. H. KALES, *Of Counsel.*

78 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the bill of complaint filed in said court on the 24th day of February, A. D. 1881, in the cause wherein James H. Easton is the complainant and The German-American Bank *et al.* are the defendants as the same appears from the original thereof now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 26th day of February, 1881.

[L. S.] WM. H. BRADLEY, *Clerk.*

DEFENDANT'S "EXHIBIT No. 13."

Supplemental Bill.

In the United States Circuit Court for the Northern District of Illinois. In Chancery.

JAMES H. EASTON *vs.* THE GERMAN-AMERICAN BANK *et al.*

To the honorable judge of said court, in chancery sitting:

Your orator, James H. Easton, respectfully shows unto your honor that on the 24th day of February, A. D. 1881, he filed his bill of complaint in the above-entitled suit; that in said bill he
79 omitted to state after the word aforesaid on the second page and the eleventh line the words "the undivided two-thirds

(⅔) of the following-described real estate, to wit;" and that the prayer of said bill asks that an accounting be had between the said defendant, The German-American Bank, and your orator, and that your orator be allowed to redeem the land described in said bill, etc.

Your orator, therefore, leave of said court having been first granted herein, files this his amended and supplemental bill, and shows unto your honor that by way of amendment he inserts after the word "aforesaid," on the second page and the tenth line of said original bill, the words: "The undivided two-thirds (⅔) of the following-described real estate, to wit."

And your orator further shows unto your honor that since he filed his said bill of complaint the said The German-American Bank, on the 26th day of February, A. D. 1881, caused to be recorded in the recorder's office of Cook county, in said district, a certain instrument in writing, called a quitclaim deed, purporting thereby to be executed by the said The German-American Bank, by its president, by which it quitclaimed all of its right, title, and interest in the land described in your orator's said bill, as claimed to be the property of the said defendant, The German-American Bank, to John C. Dore, a citizen of the State of Illinois and a resident of the city of Chicago, in said district, in consideration of the sum of fifty-six thousand ($56,000) dollars.

And your orator shows unto your honor that the said John C. Dore accepted, as your orator is informed and believes, the title by said quitclaim deed and the interest of said bank in the said
80 land claimed by said bank with a full knowledge that the said land was held by the said bank as collateral security to the said indebtedness as set forth in your orator's bill filed herein. To the end, therefore, that your orator may not be defeated in the objects and purposes of his said original bill, filed herein, and that the said defendants, if they can, show to your honor why your orator should not have the relief hereinafter prayed, and that they may without oath, their several oaths being hereby waived, full and true answers make to the premises, and that an account may be taken of what is due from the several tenants and occupants of the said land already paid, or may be paid during the pendency of this suit, and that it may be ascertained how much is due to the said The German-American Bank on account of said indebtedness or on account of taxes or any other matter or thing, or what may be due to the said John C. Dore on account of said indebtedness due the said The German-American Bank, and that your orator may be permitted to redeem the said premises on such terms and reasonable conditions and payments as may be equitable and just in the premises, and that your orator may have such further, other, and different relief in the premises as may be equitable, may it please your honor to grant unto your orator the writ of subpœna, commanding the said John C. Dore by a certain day, etc., to appear and answer the premises, etc., as to equity and good conscience may seem meet.

JAMES H. EASTON,
By CHARLES L. EASTON,
His Solicitor.

F. H. KALES, *Of Counsel.*

81 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the amended and supplemental bill filed in said court on the 16th day of March, A. D. 1881, in the cause wherein James H. Easton is the complainant and the German-American Bank *et al.* are the defendants, as the same appears from the original thereof now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 22d day of March, A. D. 1881.

[L. S.] WM. H. BRADLEY, *Clerk.*

DEFENDANT'S "EXHIBIT No. 14."

In the United States Circuit Court for the Northern District of Illinois. In Chancery.

JAMES H. EASTON *vs.* THE GERMAN-AMERICAN BANK *et al.*

To the Hon. H. W. Blodgett, sitting as judge of said court in chancery:

Your petitioner, James H. Easton, respectfully shows that on the 24th day of February, A. D. 1881, he filed his bill of complaint in the above-entitled suit; that in said bill he omitted to state after the word "aforesaid," on the second page and the tenth line, the words, "the undivided two-thirds (⅔) of the following-described real estate, to wit:

82 Your petitioner further shows that on the 26th day of February, A. D. 1881, the said defendant, The German-American Bank, filed for record in the recorder's office of Cook county, where said land described in said bill is situated, a certain instrument of writing called a quitclaim deed, purporting to be executed by the said defendant, The German-American Bank, by its president, by which it quitclaimed all of its right, title, and interest in the land described in said bill, as claimed to be the property of the said defendant, The German-American Bank, to John C. Dore in consideration of the sum of fifty-six thousand ($56,000) dollars; and your petitioner would therefore pray for leave to file an amendment and supplemental bill embracing substantially the foregoing facts, and that the said John C. Dore be made a party defendant in said entitled suit.

JAMES H. EASTON,
By CHARLES L. EASTON,
His Solicitor.

UNITED STATES OF AMERICA, }
Northern District of Illinois, State of Illinois, Cook County, } *ss:*

Charles L. Easton, being first duly sworn, deposes and says that he is the solicitor for the above-named petitioner, and that the facts

stated in the foregoing petition are true, except as to such matters therein stated upon information and belief, and as to those matters he states that he believes them to be true.

CHARLES L. EASTON.

Subscribed and sworn to before me this 5th day of March, A. D. 1881.

HENRY C. BERRY,
Notary Public.

83 DEFENDANT'S EXHIBIT No. 15, offered in evidence subject — complainant's objection that the same is immaterial and irrelevant.

This indenture, made this 8th day of February, A. D. 1881, between the German-American Bank, a banking corporation organized under the laws of the State of New York, of the city, county, and State of New York, party of the first part, and John C. Dore, of the city of Chicago, county of Cook and State of Illinois, party of the second part, witnesses: That the said party of the first part, for and in consideration of the sum of $56,000 in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs, and assigns, forever, all right, title, interest, claim, and demand which said party of the first part has in and to the following-described lots, pieces, or parcels of land, situated in the county of Cook and State of Illinois and known and described as follows, to wit: The south half of the northeast one-quarter (N. E. $\frac{1}{4}$) of the northeast one-quarter of section thirty-one; also a strip of land three hundred and thirty feet in width from north to south off from the south end of the south half (S. $\frac{1}{2}$) of the northwest one-quarter (N. W. $\frac{1}{4}$) of fractional section thirty-two (32), and extending from east to west from the west line of said section thirty-two (32) to the shore of Lake Michigan; also the north half of the north half of the southwest quarter of said fractional section thirty-two (32); also the south half of the north half of the southwest quarter (S. W. $\frac{1}{4}$) of said fractional section thirty-two (32), excepting the west five (5) acres thereof; also excepting the south one
84 (1) acre of the east five (5) acres of the west ten (10) acres of the south half of the north half of the southwest fractional quarter (S. W. fr'l $\frac{1}{4}$) of section thirty-two (32), all being in township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs, and assigns, forever.

In witness whereof the said party of the first part has caused its corporate seal to be hereto affixed and these presents to be signed by its president, Henry Rocholl, who, as such president, is authorized

by law, by the articles of association of said party of the first part, and by a resolution, duly adopted by its board of directors, to execute this conveyance, the day and year first above written.

{ The German-American Bank, }
{ Organized June, 1870, New York. Seal. }

(Signed) HENRY ROCHOLL, [SEAL.]
President of the German-American Bank.

Acknowledged and duly sworn to by Henry Rocholl, president of the German-American Bank, February 19th, 1881, before Rudolph Dulan, notary public, No. 115 Broadway, N. Y. city, in the form of proof and acknowledgment used in New York State for corporations.

Recorded February 26, 1881, at 10 a. m., in the office of the recorder of deeds of Cook county, Ill.

DEFENDANT'S EXHIBIT No. 16, which is offered in evidence
85 subject to complainant's objection that the same is immaterial and irrelevant, except as to where complainant's claim is mentioned, to wit:

Report of the assignee in bankruptcy of the sale of the lands in question and of the complainant's claim against defendant and certificates of discharge in bankruptcy of Bowen Brothers.

In the District Court of the United States for the Northern District of Illinois. In Bankruptcy.

In the Matter of JAMES H. BOWEN, GEORGE S. BOWEN, and CHAUNCEY T. BOWEN, Bankrupts.

To the Hon. Henry W. Blodgett, judge of said court:

The report of the undersigned, Robert E. Jenkins, assignee of the estate of said bankrupts, respectfully represents—

That, pursuant to the order of said court entered in said matter on the thirteenth day of March, A. D. 1880, the undersigned, assignee as aforesaid, gave notice of the sale of certain property, hereinafter described, by advertisement for three successive weeks in the newspaper called the Chicago Daily Evening Journal, published in the city of Chicago, which said notice was published on three Tuesdays on the respective dates following, to wit: March 16th, 23d, and 30th, A. D. 1880, and a copy of such notice, with publisher's certificate, is hereto attached, marked "Exhibit A," and made part thereof. Notices of such sale were also sent by mail postpaid to all known creditors of said estate, and a copy of such notices is hereto attached, marked "Exhibit B," and made part hereof; such notices were mailed in Chicago on the 27th day of March, A. D. 1880.

86 And the undersigned, assignee as aforesaid, further reports that pursuant to such notice, and at the time and place therein mentioned, to wit, on Thursday, the eighth day of April, A. D. 1880, commencing at 10 o'clock in the forenoon, at the La Salle-street entrance to the building occupied by the United States courts, said building being numbered 157 to 163 La Salle street, in the city

of Chicago, in said district, the undersigned, assignee as aforesaid, did offer for sale at public auction, for cash, to the highest bidder, the following-described property, to wit: All the assets of said estate mentioned, described, and referred to in the said notice of sale, and thereupon, in order to allow parties interested to make further investigations regarding the said assets, the said sale was adjourned to the 21st day of April, A. D. 1880, at the hour and day and place aforesaid, and afterwards printed notice of such adjourned sale was sent by mail postpaid to all known creditors of said estate, a copy of which notices is hereto attached and marked "Exhibit C;" such notices were mailed in Chicago on the 10th day of April, A. D. 1880.

And the undersigned, assignee as aforesaid, further reports that pursuant to said adjournment, and to the notice of such adjourned sale, and at the time and place aforesaid, to wit, on Wednesday, the 21st day of April, A. D., 1880, commencing at ten o'clock in the forenoon, at the place aforesaid, he did offer for sale and did sell at public auction, for cash, to the highest bidders, all his right, title, interest, and claim as assignee as aforesaid, and all the right, title, interest, and claim of the said bankrupts, or either of them, which vested in the undersigned as such assignee, in and to all the following described property, subject in all instances to all liens and incumbrances thereon and to all counter-claims and set-offs in reference thereto, to wit:

87 *Assets of Bowen Brothers.*

* * * * * * *

(Page 5 of report.)

Also the undivided two-thirds ($\frac{2}{3}$) of the southwest fractional quarter ($\frac{1}{4}$) section twenty-nine (29), township thirty-eight (38) north, range fifteen (15), and the undivided two-thirds ($\frac{2}{3}$) of the west half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$), except the west half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$), section thirty-one (31), township thirty-eight (38) north, range fifteen (15), and the west fractional half ($\frac{1}{2}$) of section thirty-two (32), township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian, excepting that portion deeded to the Baltimore, Pittsburgh and Chicago railroad, described as commencing at the southwest corner of section thirty-two (32), running east one hundred and fifty-five (155) feet; thence north eleven hundred seven and five-tenths ($1{,}107\frac{5}{10}$) feet; thence west one hundred and fifty-five (155) feet to section line, and thence south eleven hundred seven and five-tenths ($1{,}107\frac{5}{10}$) feet to the place of beginning. Said tract being a rectangular piece of ground containing three and ninety-four hundredths ($3\frac{94}{100}$) acres, more or less, sold to Carl F. Herrmann for the sum of eight hundred and forty dollars.

* * * * * * *

(Page 9 of report.)

Also claim against State Savings Institution for interest in all

collaterals pledged with said bank by said bankrupts or either of them, sold to Charles L. Easton for the sum of ten dollars.

88 Also claim against Third National Bank, Chicago (except as noted in said notice of sale), sold to Charles L. Easton for the sum of five dollars.

Also same claim against New York State Loan and Trust Company, sold to Charles L. Easton for the sum of five dollars.

Also same claim against German-American Bank of New York, sold to Charles L. Easton for the sum of five dollars.

* * * * * * *

Report of sale endorsed: Filed April 27, 1880. Wm. H. Bradley, clerk.

In the District Court of the United States for the Northern District of Illinois.

THURSDAY, *May 13th, A. D.* 1880.

Present: Hon. Henry W. Blodgett, judge.

In the Matter of JAMES H. BOWEN, GEORGE S. BOWEN, and CHAUNCEY T. BOWEN, Bankrupts.

In Bankruptcy.

It appearing to the court that no cause has been shown in answer to the rule entered herein on the twenty-seventh day of April last, in so far as the same refers to the assets of said bankrupts hereinafter set forth and described, it is ordered that said rule be, and the same is, made absolute to that extent; and it is further ordered that the report of sale and the sale of the following-described assets of said bankrupts by Robert E. Jenkins, assignee, which

89 report was filed herein on said twenty-seventh day of April last, be, and the same are hereby, approved and confirmed, to wit:

All right, title, interest, or claim of assignee and all the right, title, interest, and claim of the said bankrupts or either of them which vested in such assignee in and to the following-described property, subject in all instances to all liens and encumbrances thereon and to all counter-claims and set-offs in reference thereto, to wit:

Assets of Bowen Brothers.

* * * * * * *

Also the undivided two-thirds (⅔) of the southwest fractional quarter (¼), section twenty-nine (29), township thirty-eight (38) north, range fifteen (15), and the undivided two-thirds (⅔) of the east half (½) of the northeast quarter (¼), except the west half (½) of the northeast quarter *of the northeast quarter* (¼) of northeast quarter (¼), section thirty-one (31), township thirty-eight (38) north, range fifteen (15), and the west fractional half (½) of section thirty-two (32), township thirty-eight (38) north, range fifteen (15) east, of the third principal meridian, excepting that portion deeded to the Baltimore,

Pittsburg and Chicago railroad, described as commencing at the southwest corner of section thirty-two (32), running east one hundred and fifty-five (155) feet; thence north eleven hundred seven and five-tenths ($1,107\frac{5}{10}$) feet; thence west one hundred and fifty-five (155) feet to a secfion line; thence south eleven hundred seven and five-tenths ($1,107\frac{5}{10}$) feet to the place of beginning, said tract being
90 a rectangular piece of ground and containing three and ninety-four hundredths ($3\frac{94}{100}$) acres, more or less, to Carl F. Herrmann, for $840.

* * * * * * *

Also claim against State Savings Institution for interest in all collaterals pledged with said bank by said bankrupts or either of them, sold to Charles L. Easton for ten dollars.

Also claim against Third National Bank, Chicago (except as noted in said notice of sale), sold to Charles L. Easton for the sum of five dollars.

Also same claim against New York State Loan and Trust Company, sold to Charles L. Easton for the sum of five dollars.

Also same claim against German-American Bank of N. Y., sold to Charles L. Easton for the sum of five dollars.

* * * * * * *

All of said property being sold subject to all liens and encumbrances, said assignees are hereby authorized and directed to convey said property so sold to the purchaser thereof upon receipt of the several sums of money bid by them, respectively, as aforesaid.

Discharges in Bankruptcy.

Discharges issued to each of the parties separately; the discharges to James H. Bowen and George S. Bowen are dated twentieth of June, A. D. 1878; that to Chauncy T. Bowen is dated the 28th day of December, A. D. 1878, issued by the United States district court, northern district of Illinois, and discharges the above-named parties from all debts and claims which were provable against their estate on the 2d day of June, 1877.

91 The foregoing was duly certified by William H. Bradley, clerk of said district court, to be a true copy of the portions of the report of sale and of the order of the court entered thereon of record on the 13th day of May, 1880, and of the certificates of discharge of James H., George S., and Chauncey T. Bowen, bankrupts, in their matter of bankruptcy, as appears from the records and original thereof in his custody, with the seal of the court annexed.

DEFENDANT'S "EXHIBIT No. 17."

(Offered in evidence by defendant, but objected to by complainant as immaterial and irrelevant.)

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County, to the March Term, A. D. 1881.

Josiah H. Helmer, the plaintiff in this suit, by Charles L. Easton, his attorney, complains of the German-American Bank, a corporation organized and doing business under the laws of the State of New York, Mary P. M. Palmer, and Lucius B. Otis, receiver of the State Savings Institution, defendants of a plea; wherefore the defendants, with force and arms, etc., entered into the following-described premises for that heretofore, to wit, on the 1st day of February, 1881, the plaintiff was possessed of certain premises situated in the county of Cook and State of Illinois, and described as follows, to wit: The undivided two-thirds of the southwest fractional quarter section 29, township 38 north, range 15, and the undivided two-thirds of the east half of the northeast quarter, excepting the
92 west half of the northeast quarter of the northeast half of the northeast quarter, section 31, township 38 north, range 15, and the west fractional half of section 32, township 38 north, range 15 east, of the third principal meridian, excepting that portion deeded to the Baltimore, Pittsburg and Chicago railroad, described as commencing at the southwest corner of section 32, running east 155 feet, thence north 1,107 and $\frac{15}{100}$ feet, thence west 155 feet to section line, thence south 1,107 and $\frac{5}{10}$ feet to the place of beginning, containing three and ninety-four one-hundredths acres, more or less; and, being so possessed thereof, the defendants afterwards, to wit, on the 2d day of February, A. D. 1881, entered into such premises, and that they unlawfully withhold from the plaintiff the possession thereof; and the plaintiff avers that he claims title to said premises in fee, wherefore the plaintiff says that he is injured and has sustained damages to a large amount, to wit, one hundred thousand dollars ($100,000), and therefore he brings suit.

By CHARLES L. EASTON,
Attorney for Plaintiff.

To the German-American Bank, Mary P. M. Palmer, and Lucius B. Otis, receiver of the State Savings Institution, defendants in the above suit:

Take notice that on the first day of the March term of the superior court of Cook county within and for said county, to wit, the court-house in Chicago, in said county and State, on the 7th day of March, A. D. 1881, or as soon thereafter as counsel can be heard, a declaration, of which the foregoing is a copy, will be filed in the said superior court of Cook county.

93 Second. That upon filing the same a rule will be entered requiring you, such defendants, to appear and plead to said declaration within twenty days after the entering of said rule.

Third. That if you neglect so to appear and plead a judgment by default will be entered against you and the plaintiff recover possession of the premises described in said declaration.

Dated at Chicago this 15th day of February, A. D. 1881.

CHARLES L. EASTON,
Attorney for Plaintiff.

Rooms 9 & 10, 102 Washington street, Chicago.

Filed February 15th, 1881.

JNO. J. HEALY, *Clerk.*

STATE OF ILLINOIS, } ss:
Cook County, }

The people of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon the German-American Bank, Mary P. M. Palmer, and Lucius B. Otis, receiver State Savings Institution, if they shall be found in your county, personally to be and to appear before the superior court of Cook county on the first day of the term thereof, to be holden at the court-house, in the city of Chicago, in said Cook county, on the first Monday of March next, to answer unto Josiah H. Helmer in a plea of ejectment to the damage of said plaintiff, as it is said, in the sum of one hundred thousand dollars.

And have you then and there this writ, with an endorse-
94 ment thereon in what manner you shall have executed the same.

Witness John J. Healy, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 15th day of February, A. D. 1881.

[SEAL.] JNO. J. HEALY, *Clerk.*

Served this writ on the within-named Lucius B. Otis, receiver of the State Savings Institution, by delivering a copy of the same to him this 23d day of February, 1881.

O. L. MANN, *Sheriff.*
By J. H. BURKE, *Deputy.*

P'd $1.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Patrick McGrath, clerk of the superior court, Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain declaration and summons now on file in my office, in a certain cause lately pending in said court, on the common law side thereof, wherein Josiah H. Helmer was plaintiff and the German-American Bank *et al.* were defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 24th day of January, A. D. 1885.

[SEAL.] P. McGRATH, *Clerk.*

95 DEFENDANT'S EXHIBIT NO. "18."

(Offered in evidence subject to complainant's objection that the same is immaterial and irrelevant.)

This indenture, made and entered into this thirteenth day of May, in the year one thousand eight hundred and eighty, by and between Robert E. Jenkins, of Chicago, in the county of Cook and State of Illinois, assignee in bankruptcy of the estate and effects of James H., George S., and Chauncey T. Bowen, bankrupts, and also of said county and State, party of the first part, and Carl F. Hermann, of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That whereas in accordance with the provisions of the Revised Statutes of the United States, title "Bankruptcy," a petition was filed in the district court of the United States for the northern district of Illinois, on the second day of June, A. D. 1877, in the matter of said bankruptcy, and such proceedings were had in said court, under said petition that afterwards, and on the tenth day of November, A. D. 1877, the said James H., George S., and Chauncey T. Bowen were duly adjudged and declared bankrupts, and afterwards, on the 23d day of February, A. D. 1878, the said Robert E. Jenkins was duly appointed assignee of the estate and effects of said bankrupts by H. N. Hibbard, Esq., one of the registers in bankruptcy of said court, which said appointment was thereafter duly approved and confirmed by said court, and on the 23d day of February, A. D. 1878, said register, by an instrument in writing under his hand and the seal of said court, did convey and assign unto the

96 said Robert E. Jenkins, as such assignee, all the estate, real and personal, of the said bankrupts, James H., George S., and Chauncey T. Bowen, including all the property of whatsoever kind of which the said bankrupts were possessed, or in which they were interested, or which they were entitled to have on said second day of June, A. D. 1877 (excepting only such property as is excepted by the 5045th section of said Revised Statutes);

And whereas said bankrupts, James H., George S., and Chauncey T. Bowen appear to have been on said last-mentioned date possessed of or entitled to an interest in the real estate and property hereinafter mentioned, and the said Robert E. Jenkins, assignee as aforesaid, having first given notice by publication once a week for three consecutive weeks pursuant thereto, and on the 21st day of April, A. D. 1880, did offer for sale and sell the said real estate and property at public auction, and at said sale the said party of the second part was the highest bidder and became the purchaser thereof for the price and sum of fourteen hundred and fifty ($1,450) dollars, which sale having been duly reported to said court was thereafter, to wit, on the thirteenth day of May, A. D. 1880, approved and confirmed by said court;

And whereas said court did, on the day and year last named, order and direct said Robert E. Jenkins, assignee, to execute and deliver said party of the second part a deed for said real estate so sold to said party of the second part as aforesaid, conveying the said real estate to said purchaser in accordance with the terms of said sale:

Now, therefore, in consideration of the premises and of the sum of fourteen hundred and fifty dollars to said assignee in hand
97 paid by said party of the second part, the receipt whereof is hereby acknowledged, the said Robert E. Jenkins, assignee as aforesaid, party of the first part as aforesaid, has remised, released, sold, conveyed and quitclaimed, and by these presents does hereby remise, release, sell, convey, and forever quitclaim, unto the said party of the second part all the right, title, interest, estate, claim, and demand of the said bankrupts which they had on the said second day of June, A. D. 1877, and of the said Robert E. Jenkins as assignee aforesaid (subject to all unpaid taxes and to all liens and encumbrances, unless by the terms of said sale expressly excepted), in and to the following-described real estate, to wit:

The undivided two-thirds ($\frac{2}{3}$) of the southwest fractional quarter ($\frac{1}{4}$) section twenty-nine, township thirty-eight (38) north, range fifteen (15), and the undivided two-thirds ($\frac{2}{3}$) of the east half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$), except the west half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) section thirty-one (31), township thirty-eight (38) north, range fifteen (15), and the west fractional half ($\frac{1}{2}$) of section thirty-two (32), township thirty-eight (38) north, range fifteen (15) east, of the 3rd principal meridian, excepting that portion deeded to the Baltimore, Pittsburgh and Chicago railroad, described as commencing at the southwest corner of section thirty-two (32), running east one hundred and fifty-five (155) feet; thence north eleven hundred seven and five-tenths ($1107\frac{5}{10}$) feet; thence west one hundred and fifty-five (155) feet to section line; thence south eleven hundred seven and five-tenths ($1107\frac{5}{10}$) feet to the place of beginning, said tract being a rectangular piece of ground and containing three and ninety-four hundredths ($3\frac{94}{100}$) acres, more or less.

98 Also the undivided one-half ($\frac{1}{2}$) lots ten (10) to twenty (20), both inclusive, in block one (1), lots one (1) to six (6), both inclusive, and lots eight (8) and nine (9), eleven (11) to fifteen (15), both inclusive, and nineteen (19) and twenty (20), in block two (2), and lots one (1) to twenty (20), in block four (4) of Stave and Klemm's subdivision of northeast quarter ($\frac{1}{4}$) of section twenty-five (25), township thirty-eight (38), range fourteen (14), and the undivided one-half ($\frac{1}{2}$) of lots six (6), eleven (11), and fourteen (14), in G. W. Clark's subdivision of the east half ($\frac{1}{2}$) of northwest quarter ($\frac{1}{4}$) of section twenty-five (25), township thirty-eight (38), range fourteen (14), all being situated in county of Cook and State of Illinois:

To have and to hold the same, together with all the right, title, and interest of the said James H., George S., and Chauncey T. Bowen, bankrupts aforesaid, which they had in and to said property at the date of the commencement of the said proceedings in bankruptcy,

with all the improvements, rights, privileges, and appurtenances thereunto belonging, and all the interest which the said party of the first part acquired in and to said property by virtue of his appointment as assignee aforesaid, but subject to all unpaid taxes and tax liens, and to all liens and encumbrances unless expressly excepted, released, or discharged by the order of said court concerning said sale, and subject to all the terms and conditions of said sale, unto the said party of the second part and to his heirs and assigns forever.

In testimony whereof the said Robert E. Jenkins, assignee as aforesaid, has hereunto set his hand and seal the day and year first above written.

ROBERT E. JENKINS, [SEAL.]
Assignee as Aforesaid.

99 STATE OF ILLINOIS, } ss:
Cook County, }

I, Edward R. Richards, a notary public in and for and residing in said county of Cook and State of Illinois, do hereby certify that Robert E. Jenkins, assignee in bankruptcy of the estate and effects of James H., George S., and Chauncey T. Bowen, the bankrupts named in the foregoing instrument of writing, who is personally known to me to be such assignee and to be the same person whose name is subscribed to the said instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and notarial seal this thirteenth day of May, A. D. 1880.

[NOTARIAL SEAL.] E. R. RICHARDS,
Notary Public.

No. 306,760. Filed for record January 20, 1881, at 2 o'clock p. m.
JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockaway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 20th day of January, A. D. 1881, as document No. 306,760 and recorded in book 1075 of records, at page 34.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this twenty-first day of June, A. D. 1883.

[OFFICIAL SEAL.] JAS. W. BROCKWAY, *Recorder.*

100 DEFENDANT'S "EXHIBIT No. 19."

(Offered in evidence by defendants, subject to objection of complainant that the same is immaterial and irrelevant.)

This indenture, made this fifth day of August, in the year of our Lord one thousand eight hundred and eighty, between Carl F. Her-

mann and Elise Hermann, his wife, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Josiah H. Helmer, of the city of Lockport, in the county of Niagara and State of New York, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of fourteen hundred and sixty-three ($1,463) dollars in hand paid by the said party of the second part, forever released and discharged therefrom, have remised, released, sold, conveyed, and quitclaimed, and by these presents do remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns, forever all the right, title, interest, claim, and demand which said party of the first part have in and to the following-described lots, pieces, or parcels of land situated in the county of Cook and State of Illinois and known and described as follows, to wit:

The undivided two-thirds ($\frac{2}{3}$) of the southwest fractional quarter ($\frac{1}{4}$), section twenty-nine (29), township thirty-eight (38) north, range fifteen (15), and the undivided two-thirds ($\frac{2}{3}$) of the east half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$), except the west half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$),
101 section thirty-one (31), township thirty-eight (38) north, range fifteen (15), and the west fractional half ($\frac{1}{2}$) of section thirty-two (32), township thirty-eight (38) north, range fifteen (15), east of the third (3d) principal meridian, excepting that portion deeded to the Baltimore, Pittsburgh and Chicago railroad, described as commencing at the southwest corner of section thirty-two (32), running east one hundred and fifty-five (155) feet; thence north eleven hundred seven and five-tenths ($1,107\frac{5}{10}$) feet; thence west one hundred and fifty-five (155) feet to section line; thence south eleven hundred seven and five-tenths ($1,107\frac{5}{10}$) feet to the place of beginning; said tract being a rectangular piece of ground and containing three and ninety-four hundredths ($3\frac{94}{100}$) acres, more or less; also the undivided one-half ($\frac{1}{2}$) lots ten (10) to twenty (20), both inclusive, in block one (1); lots one (1) to six (6), both inclusive; and lots eight (8) and nine (9); eleven (11) to fifteen (15), both inclusive; and nineteen (19) and twenty (20), in block two (2), and lots one (1) to twenty (20), in block four (4), of Stave and Klemm's subdivision of northeast quarter ($\frac{1}{4}$) of section twenty-five (25), township thirty-eight (38), range fourteen (14); also the undivided half ($\frac{1}{2}$) of lots six (6), eleven (11), and fourteen (14) in G. W. Clark's subdivision of the east half ($\frac{1}{2}$) of northwest quarter ($\frac{1}{4}$) of section twenty-five (25), township thirty-eight (38), range fourteen (14):

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said part of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

And the said party of the first part hereby expressly
102 waives and releases any and all right, benefit, privilege, advantage, and exemption under and by virtue of any and all

statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

CARL F. HERRMANN. [SEAL.]
ELIESE HERRMANN. [SEAL.]

Signed, sealed, and delivered in the presence of—
HENRY C. BERRY.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry C. Berry, a notary public in and for the said county, in the State aforesaid, do hereby certify that Carl F. Hermann and Elise Herman, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 5th day of August, A. D. 1880.

[NOTARIAL SEAL.] HENRY C. BERRY,
Notary Public, Cook County.

No. 306,757. Filed for record this 20th day of January, A. D. 1881, at 2 o'clock p. m.

JAS. W. BROCKWAY, *Recorder.*

103 STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 20th day of January, A. D. 1881, as document No. 306,757, and recorded in book 1036 of records, at page 113.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this 21st day of June, A. D. 1883.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

DEFENDANT'S "EXHIBIT No. 20."

(Offered in evidence by defendants, subject to complainant's objection of immateriality and irrelevancy.)

This indenture witnesseth: That the grantor, Josiah H. Helmer, widower, of the city of Lockport, in the county of Niagara and the State of New York, for the consideration of one dollar, conveys and quitclaims to Robert Berger, of the city of Chicago, county of Cook and State of Illinois, all interest in the following-described real estate, to wit:

The south half of the northeast quarter of the northeast quarter

of section thirty-one (31); also a strip of land three hundred and thirty feet in width from north to south off from the south end of the south half of the northwest quarter of said fractional section thirty-two (32), and extending from east to west from the west
104 line of said section thirty-two (32) to the shore of Lake Michigan; also the north half of the north half of the southwest quarter of said fractional section thirty-two (32), and also the south half of the north half of the southwest quarter of said fractional section thirty-two (32), excepting the west five (5) acres thereof, as by reference to said decree entered at the January term, A. D. 1880, of the circuit court of Cook county, State of Illinois, will more fully appear; all of said property being situated in township thirty-eight (38) north, range fifteen (15), east of the third principal meridian, situated in the county of Cook, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this 29th day of September, A. D. 1883.

J. H. HELMER. [SEAL.]

STATE OF NEW YORK, *County of Niagara,* } ss:

I, J. J. Arnold, a notary public in and for the said county, in the State aforesaid, do hereby certify that Josiah H. Helmer, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this first day of October, A. D. 1883.

[NOTARIAL SEAL.] J. J. ARNOLD.
Notary Public.

105 STATE OF NEW YORK, *Niagara County,* } ss:

CLERK'S OFFICE.

I, John A. Merritt, clerk of the county of Niagara, and also clerk of the supreme court for said county, the same being a court of record, do certify that J. J. Arnold, before whom the annexed instrument in writing was proved or acknowledged, was at the time of taking the same a notary public in and for said county duly authorized to take the same, and that I am well acquainted with the handwriting and verily believe the signature to the said certificate is genuine and that the annexed instrument is executed and acknowledged according to the laws of the State.

In witness whereof I have hereunto set my hand and affixed my official seal, at Lockport, in said county, this 1st day of October, A. D. 1883.

[NIAGARA COUNTY SEAL.] JOHN A. MERRITT, *Clerk.*

No. 521,551. Recorded January 25, A. D. 1884, at three p. m.
JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Wiley S. Scribner, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 25th day of January, A. D. 1884, as document No. 521,551, and recorded in book 1,369 of records, at page 461.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this 24th day of January, A. D. 1885.

[OFFICIAL SEAL.] WILEY S. SCRIBNER, *Recorder.*

106 DEFENDANT'S "EXHIBIT No. 21."

(Offered in evidence, subject to complainant's objection that the same is immaterial and irrelevant.)

This indenture, made the first day of September, in the year one thousand eight hundred and eighty-three, between James H. Easton and Mollie M. Easton, his wife, of Winneshiek county and State of Iowa, party of the first part, and Robert Berger, of the city of Chicago, county of Cook and State of Illinois, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described premises, to wit:

The south half of the northeast quarter of the northeast quarter of section thirty-one (31); also a strip of land three hundred and thirty-three feet in width from north to south off from the south end of the south half of the northwest quarter of fractional section thirty-
107 two (32), and extending from east to west from the west line of said section thirty-two (32) to the shore of Lake Michigan; also the north half of the north half of the southwest quarter of said fractional section thirty-two (32), and also the south half of the north half of the southwest quarter of said fractional section thirty-two (32), excepting the west five (5) acres thereof, as more fully described in a deed entered in the circuit court of Cook county, State of Illinois, at the June term, 1880, thereof, in the case of McKey against Bowen *et al.;* all of the above land is in township thirty-eight (38), range fifteen (15), situate in Cook county, State of Illinois; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, claim, or demand against property, possession, claim, and demand what-

soever, as well in law as in equity, of the said party of the first part of, in, and to the same and every part and parcel thereof, with the appurtenances:

To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his own proper use, benefit, and behoof forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES H. EASTON. [SEAL.]
MOLLIE M. EASTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
P. P. POPE.

108 STATE OF NEW YORK, }
City and County of New York, } ss:

On this eleventh day of September, in the year one thousand eight hundred and eighty-three, before me personally came James H. Easton and Mollie M. Easton, his wife, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they therefrom severally acknowledged to me that they had executed the same.

[Seal Peter P. Pope, Notary Public, King's County, N. Y.]

P. P. POPE,
Notary Public, Kings County.

Certificate filed in N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that P. P. Pope has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was, at the time of taking the proof or acknowledgment of the annexed instrument, duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

109 In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 11th day of September, 1883.

[NEW YORK SEAL.] PATRICK KEENAN, *Clerk.*

No. 521,549. Recorded Jan. 25, A. D. 1884, at 3 p. m.
JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss :
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 25th day of Jan., A. D. 1883, as document No. 521,549 and recorded in book 1439 of records, at page 302.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this sixth day of June, A. D. 1884.

JAMES W. BROCKWAY, *Recorder.*

110 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the fourteenth day of April, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable William J. Wallace, circuit judge.

CHARLES L. EASTON *vs.* THE GERMAN-AMERICAN BANK.

The above cause coming on for final hearing upon pleadings and proofs, Mr. Charles P. Crosby is heard in behalf of complainant; Mr. Edward Salomon is heard in behalf of defendant.

C. A. V.

111 United States Circuit Court, Southern District of New York.

EASTON *vs.* GERMAN-AMERICAN BANK.

WALLACE, *J.:*

In April, 1875, the firm of Bowen Brothers borrowed $27,500 of the defendant, giving notes payable, respectively, two, three, and four months from that date. As collateral security for the payment of this loan Bowen Brothers deposited with the defendant forty bonds, of the denomination of $1,000 each, made by them payable to bearer five years from date, with interest semi-annually and bearing date April 1st, 1873. These bonds were part of a series of one hundred of like tenor and amount; all of which were secured by a trust deed of certain real estate in Cook county, Illinois, executed by Bowen Brothers to one Smith as trustee for the
112 purpose of securing the prompt payment of the said bonds and the interest thereon, in whosesoever hands the same might be. The trust deed provided that in case of default in payment of the bonds or interest it should be lawful for the trustee, on the application of the holder of any of said bonds, to sell the said real estate or any part thereof and all the right and equity of redemption of the grantors therein at public vendue to the highest bidder for cash, and upon making such sale to execute and deliver to the purchaser a deed of conveyance in fee of the premises sold, which sale and conveyance should be a perpetual bar, both in law and equity, against the grantors, their heirs, and assigns, and all other persons claiming under them.

Bowen Brothers have never paid the defendant's loan to them.

By the terms of the pledge made by Bowen Brothers to the
113 defendant of the forty bonds the defendant was authorized, on non-payment of the notes at maturity, to sell the collaterals at the board of brokers at public auction or at private sale and without notice to Bowen Brothers, and to apply the proceeds of such sale to the payment of the notes. The defendant has never made a sale of the collaterals pursuant to the terms of the pledge and still retains the bonds. In January, 1877, the trustee in the trust deed, upon the application of the State Savings Institution of Chicago, the holder of thirty-two of the bonds upon which no interest had been paid, sold the premises, after due notice, at public auction to one Dexter, the highest bidder, for $50,000 cash. The sale was regular, and the trustee conveyed to Dexter, conformably to the terms of the power in the trust deed. In purchasing the real estate Dexter acted as agent for the holders of the bonds, including the defendant, he having been authorized by the holders to bid
114 for and purchase the property for them jointly in order to protect their interests. Thereafter he conveyed to the defendant $\frac{4}{100}$ of the property purchased by him, and in a partition suit subsequently brought a separate portion of the real estate was set off to the defendant in lieu of its undivided interest in the property. No part of the purchase-money paid by Dexter was actually advanced by the defendant, but the defendant credited Bowen Brothers with $\frac{4}{100}$ of the amount upon their loan, leaving Bowen Brothers still indebted to the defendant in the sum of several thousand dollars. In February, 1881, the defendant sold and conveyed the real estate thus acquired by it to one Dore for the sum of $56,000.

The complainant claims to have acquired all the interests of Bowen Brothers and all their cause of action against the
115 defendant growing out of the transaction by mesne transfers from their assignee in bankruptcy. He files this bill upon the theory that the defendant is bound to account for the $56,000, the proceeds of its sale of the real estate to Dore, and for the rents and profits during the time the defendant was in possession of the real estate. It is not alleged in the bill that the sale of the real estate was not fairly made, or that the sum for which it was purchased was not a fair price, or that the defendant acted otherwise than in entire good faith and for the sole purpose of protecting its own debt. The theory of the bill is that the pledgors are entitled, as a matter of strict right, to the profits made by the defendant by a fortunate sale of the real estate after four years had elapsed since the purchase.

116 Inasmuch as the defendant has all along been a pledgee of the collaterals, which were hypothecated to it by Bowen Brothers as security for its loan to them, it is clearly bound to account to them or to their assignee for all moneys received by it from the collaterals. If the defendant had exchanged the bonds directly for the real estate unquestionably it would be accountable for the value of the real estate, and the pledgors upon tendering the sum due upon the loan would be entitled to a conveyance. In that

case it would have exchanged the pledged property for other property in contravention of its duties as a trustee for the pledgors to sell the pledged property and apply the avails to the discharge of the debt. Unless the purchase at the sale was in legal effect such
117 an exchange — the pledgors had no interest in the *in the* purchase except upon the theory that the defendant was incapacitated because of its fiduciary relation towards the pledgor from purchasing on its own account.

In considering the rights of the parties the circumstance that the pledgors were the grantors in the trust deed may be left out of view, and the case may properly be treated as though the bonds pledged to the defendant and the trust deed securing them had been executed by persons other than the immediate parties to the pledge. The interest of Bowen Brothers in the real estate as grantors in the trust deed was cut off by the sale made by the trustee, and they occupy no different relation to the transaction as the grantors than if they had never conveyed to the trustee. Their rights, whatever they are, accrue because they were the pledgors of the bonds.
118 The real estate was not pledged to the defendant, but a sum of money to be produced by a sale of real estate was pledged as an incident of the bonds. That sum, when received, was to become the money of the defendant and was to extinguish defendant's debt against the pledgors *pro tanto*. The pledgors had no interest in it after it was received by the defendant, and, whether it was invested profitably or unprofitably, whether in the same land by which it was originally produced or in other lands, was a matter of no concern to the pledgors.

If the defendant, as a pledgee of the bonds, was under a duty to the pledgors to intervene at the sale under the trust deed and to promote a sale on advantageous terms for the benefit of the pledgors, so as to enable them to realise as much as possible upon the bonds, it might well be urged that this duty would subject the de-
119 fendant to the ordinary disabilities of a fiduciary and incapacitate it from purchasing, directly or indirectly to its own benefit without the consent of the pledgors. In the language of the court in Torrey *vs.* Bank of Orleans, 9 Paige, 663, "It is a settled principle of equity that no person who is placed in a situation of trust or confidence in reference to the subject of a sale can be a purchaser of the property on his own account." Where he has a duty to perform which is inconsistent with the character of a purchaser he cannot divest himself of the equities of the *cestui que trust* to demand the profits that may arise from the transaction. As was said in Michoud *vs.* Girod, 4 How., 555, by Mr. Justice Wayne, "The general rule stands upon our great moral obligation to refrain from placing ourselves in relations which ordinarily excite a conflict between self interest and integrity." It matters not, when the
120 fiduciary relation exists, that the sale was brought about by a third party without any active procurement or intervention on the part of the fiduciary, or that the sale was public, or that the price was fair, or that there was no intention to gain an unfair ad-

vantage. The real question in the case is whether the defendant owed such a duty to the pledgors.

When negotiable instruments are pledged as collateral it is the duty of the pledgee not only to deal with them as not to destroy or impair their value, but he is to use ordinary diligence to make them available for the payment of the debt. If he suffers endorsed paper to mature without resorting to the necessary steps to charge the endorser or fails to pursue reasonably the primary parties he may become responsible for any loss that may ensue. Whitten *vs.* Wright, 34 Mich., 92; Russell *vs.* Hester, 10 Ala., 535; Barrow *vs.*
121 Rhinelander, 3 John. Ch., 614; Lamberton *vs.* Windham, 12 Min., 322. Even the neglect to prosecute overdue paper may subject the pledgee to liability to the pledgor in case of loss. Rice *vs.* Benedict, 19 Mich., 132; Hanna *vs.* Holton, 78 Penn. St., 334; Wood *vs.* Morgan, 5 Sneed, 79; Nolan *vs.* Clark, 10 B. Monr., 239.

When the pledgee has exercised ordinary diligence to secure the fruits of the pledge for the benefit of the pledgor, in view of all the circumstances of the particular transaction, his duty has been fully discharged.

Applying this standard of diligence to the present case it seems clear that the defendant was not required by its duty to the pledgers to become a bidder at the sale or take any active measure to increase the fund to be realized thereby. By the terms of the trust deed the land was to be sold publicly, after a published notice of twenty
122 days, by a trustee, who was to sell or adjourn the sale at his discretion and whose duty it was to consult *to consult* the best interests of all parties interested in the sale.

The defendant might reasonably rely upon the presumption that such a sale would be fairly conducted and would produce a fair return. It occupied no better position than the pledgers did in respect to promoting an advantageous sale, and therefore did not stand in the relation of a fiduciary towards the pledger. In view of the scheme of the sale the defendant had a right to infer that the pledger intended to consent in advance that the amount of the fund applicable to the bonds should be determined by the result of the sale.

If no active duty to promote an advantageous sale was in-
123 cumbent upon the defendant it was not incapacitated from becoming a purchaser at the sale. The reason why a pledgecannot ordinarily acquire a valid title as against the pledgor by a purchase of the property pledged, although the sale is regularly and publicly made, unless the pledger assents (Middlesex Bank *vs.* Minot, 4 Mot., 325; Bryan *vs.* Baldwin, 52 N. Y., 293), is because he cannot be at the same time a vendor and a purchaser of the property. The defendant here was not the vendor, but occupied the position of a creditor or of a *cestui que trust*, seeking to realize as much as might be practicable out of a fund by which its debt was secured. The defendant and the pledgors stood upon terms of complete equality.

The circumstance that the defendant did not actually advance any money upon the purchase is not material. The transaction
124 was the same, in substance, as if it had paid the purchase

price in money, and when it was received back its portion of the proceeds of the sale had applied the amount upon the debt of the pledgor.

Having reached the conclusion that the defendant had a right to purchase the real estate, and that no equities of the pledgors were impressed upon the transaction, it is not necessary to consider other questions which have been made in the case respecting the plaintiff's acquisition of the the rights of Bowen Brothers.

The bill is dismissed with costs.

Endorsed: United States circuit court, southern district of New York. Easton *vs.* German-American Bank. Opinion. Wallace, J. U. S. circuit court. Filed Jul- 9, 1885. Timothy Griffith, clerk.

125 At a stated term of the circuit court of the United States, held in and for the southern district of New York, in the post-office building in the city of New York, on the ninth day of July, 1885.

Present: Hon. William J. Wallace, circuit judge.

CHARLES L. EASTON, Complainant,
against
THE GERMAN-AMERICAN BANK, Defendant.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: That the complainant's bill of complaint be, and the same hereby is, dismissed on the merits with costs to the defendant, to be taxed by the clerk and to be paid by the complainant.

(Signed) WM. J. WALLACE.

126 (Endorsed.)

It is stipulated in this action between the respective parties thereto, by their respective solicitors, as follows:

First. The complainant herein, by his solicitor, waives notice on the part of the defendant herein of the settlement of the decree herein.

Second. The complainant, by his solicitor, hereby approves the foregoing decree as to the form thereof.

Third. The solicitors for the defendant hereby stipulate to serve upon the solicitor for the complainant a copy of the foregoing decree as finally entered with notice of the day of filing and entering the same.

Dated July 25, 1885.

(S'g'd) CHAS. P. CROSBY,
Solicitor for Complainant.
SALOMON & DULAN,
Solicitors for Defendant.

(Endorsed:) U. S. circuit court, southern district of N. Y. Charles L. Easton, complainant, against The German-American Bank, defendant. Decree. U. S. circuit court. Filed July 28, 1885. Timothy Griffith, clerk.

127 Circuit Court of the United States, Southern District of New York. In Equity.

CHARLES L. EASTON, Complainant,
vs.
THE GERMAN-AMERICAN BANK, Defendant.

It is hereby stipulated that the foregoing papers may constitute the record to be sent by the clerk of the circuit court to the clerk of the Supreme Court of the United States on the hearing on appeal in said Supreme Court in the above cause.

New York, September 12, 1885.

(Signed) SALOMON & DULAN,
Solicitors for Defendant, 115 *Broadway, New York City.*
(Signed) CHARLES P. CROSBY,
Solicitor for Complainant.

(Endorsed:) U. S. circuit court. Filed Sept. 14, 1885. Timothy Griffith, clerk.

128 In the Circuit Court of the United States for the Southern District of New York. In Equity.

CHARLES L. EASTON, Complainant,
against
THE GERMAN-AMERICAN BANK.

To the honorable the Supreme Court of the United States:

The appeal of Charles L. Easton, the above-named complainant and appellant, respectfully showeth—

That on the twenty-seventh day of June, in the year one thousand eight hundred and eighty-four, the above-named complainant filed his bill in the circuit court of the United States within and for the southern district of New York, in equity, against the above-named defendant, wherein and whereby it was prayed that an accounting be had with reference to the collateral security mentioned in said bill, and that the defendant be decreed to pay to the complainant the amount that might be found due to him on such ac-
129 counting, and that the complainant might have such further, other, or different relief, if necessary, as might be equitable.

That the answer of the defendant in said cause was filed on the first day of September, 1884, and the replication to said answer was filed on the sixth day of October, 1884.

That thereafter the testimony in said cause was taken.

That on the twenty-eighth day of July, 1885, a final decree was entered in said cause in favor of the defendant and against the complainant by which it was ordered, adjudged, and decreed that the complainant's bill of complaint be dismissed on the merits, with costs to the defendant, to be taxed by the clerk, and to be paid by the said complainant.

Wherefore this appellant appeals from the whole of said final decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court and the bill, answer, plead-

ings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without
130 delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed, and a decree made granting to the complainant the relief prayed for in and by his said bill of complaint, or such other decree as to the said Supreme Court shall seem just.

Dated September 3rd, 1885.

(Signed) CHARLES L. EASTON.

CHARLES P. CROSBY,
Solicitor for Complainant and Appellant.

The foregoing appeal is hereby allowed.
Dated September 4th, 1885.

(Signed) WM. J. WALLACE.

(Endorsed:) United States circuit court, southern district of New York. Charles L. Easton, complainant, against The German-American Bank, defendant. Claim of appeal. Charles P. Crosby, solicitor for complainant. U. S. circuit court. Filed Sep. 4, 1885. Timothy Griffith, clerk.

131 Supreme Court of the United States.

CHARLES L. EASTON, Complainant and Appellant,
against
THE GERMAN-AMERICAN BANK, Defendant and Respondent.

Know all men by these presents that I, Charles L. Easton, of the city of Chicago, in the county of Cook and State of Illinois, am held and firmly bound unto the German-American Bank in the sum of two hundred and fifty dollars, to be paid to the said The German-American Bank, its successors or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated this third day of September, one thousand eight hundred and eighty-five.

Whereas the above-named Charles L. Easton, complainant and appellant, hath taken an appeal to the Supreme Court of the
132 United States to reverse the decree entered and rendered in the above-entitled action by the circuit court of the United States within and for the southern district of New York, or the judge thereof:

Now, therefore, the condition of this obligation is such that if the above-named Charles L. Easton, complainant and appellant, shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his said appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(S'g'd) CHARLES L. EASTON.

Sealed and delivered in presence of—
(S'g'd) PETER P. POPE.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } ss:

Charles L. Easton, being duly sworn, says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

133 (S'g'd) CHARLES L. EASTON.

Sworn to before me this 3rd day of September, 1885.

[NOTARIAL SEAL.] (S'g'd) P. P. POPE,
Notary Public Kings County.

Certificate filed in N. Y. Co.

We hereby assent to the approval of the foregoing bond.
New York, September 3, 1885.

(Signed) SALOMON & DULON,
Def't's Solicitors, 115 *Broadway, N. Y. City.*

I approve of the above bond and of the sufficiency of the sureties thereto.

(Signed) WM. J. WALLACE.

(Endorsed:) Supreme Court of the United States. Charles L. Easton, complainant and appellant, against The German-American Bank, defendant and respondent. Bond on appeal. Charles P. Crosby, solicitor for complainant.

Due and timely service of a copy of the within bond on appeal admitted this 4th day of September, 1885.

134 (S'g'd) SALOMON & DULON,
Def't's Solicitors, 115 *Broadway, New York City.*

(Further endorsed:) U. S. circuit court. Filed Sept. 4, 1885. Timothy Griffith, clerk.

135 By the Honorable William J. Wallace, one of the judges of the circuit court of the United States within and for the southern district of New York, in equity, to the German-American Bank:

Whereas Charles L. Easton has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States within and for the southern district of New York made in favor of you, the said German-American Bank, and has filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court at the city of Washington on the second Monday of October, one thousand eight hundred and eighty-five, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 4th day of September, in the year of our Lord one thousand eight hundred and eighty-five.

(Signed) WM. J. WALLACE,
136 *Circuit Judge.*

(Endorsed:) United States circuit court, southern district of New York. Charles L. Easton, complainant, against The German-American Bank, defendant. Citation. Charles P. Crosby, solicitor for complainant. Due and timely service of a copy of the within citation admitted this 4th day of September, 1885. (S'g'd) Salomon & Dulon, def't's solicitors, 115 Broadway New York city. U. S. circuit court. Filed Sept. 4, 1885. Timothy Griffith, clerk.

137 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to one hundred and thirty-six, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Charles L. Easton, complainant and appellant, against The German-American Bank, defendant and respondent, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifteenth day of September, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the said United States the one hundred and tenth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 291. Charles L. Easton, appellant, *vs.* The German-American Bank. Filed September 16, 1885.

127-582

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1887.

No. 291.

CHARLES L. EASTON,
Appellant,
vs.
THE GERMAN AMERICAN BANK,
Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR APPELLANT.

CHARLES P. CROSBY,
OF COUNSEL.

BARNARD & GUNTHORP, PRINT.

IN THE

Supreme Court of the United States,

CHARLES L. EASTON,
Appellant,
vs.
THE GERMAN AMERICAN BANK,
Appellee.

BRIEF FOR APPELLANT.

I.

STATEMENT.

In April, 1875, the firm of Bowen Brothers borrowed $27,500 of the appellee, giving notes payable respectively two, three and four months from date; as collateral security for the payment of the loan, Bowen Brothers deposited with the appellee forty (40) bonds of the denomination of $1,000 each, made by them, payable to bearer, five years from date, with interest semi-annually, and bearing date April 1, 1873. By the terms of the pledge made by Bowen Brothers to the appellee of the forty bonds, the appellee was authorized on non-payment of the notes at maturity, to sell the collaterals at the Board of Brokers at public auction or at private sale, and without notice to Bowen Brothers, and apply the proceeds to the payment of the notes. Bowen Brothers have never paid the loan. (Rec., pp. 5, 6, and 23.)

These bonds were a number of a series of 100, of like tenor and amount, all of which were secured by a trust deed of certain real estate in Cook county, Illinois, executed by Bowen Brothers to George W. Smith, as trustee, for the purpose of securing the payment of the said bonds and the interest thereon. The trust deed provided that in case of default in payment of the bonds or interest, it should be lawful for the trustee, on the application of the holder of any of said bonds, to sell the real estate or any part thereof and all the right and equity of redemption of the grantors therein at public vendue to the highest bidder for cash, and upon making such sale to execute and deliver a deed of conveyance in fee of the premises sold. (Rec., pp. 33, 34, 35 and 36.)

In January, 1877, the trustee in the trust deed, upon the application of the State Savings Institution of Chicago, the holder of thirty-two (32) of the bonds, upon which no interest had been paid, sold the premises conformable to the terms of the power under the trust deed, after due notice, at public auction, to Wirt D. Dexter, for the sum of $50,000. (Rec., pp. 37, 38, 39 and 40.) The trustees conveyed the premises to Dexter in pursuance of the sale. Dexter in making the bid and the purchase of the premises at the public auction, acted as agent for the holders of the 100 bonds, including the appellee, he having been authorized by the holders of all of the bonds to bid for and purchase the property for them jointly. Thereafter he conveyed an undivided $\frac{40}{100}$ of the property purchased by him and in a partition suit subsequently brought, a separate portion of the real estate was set off to the appellee, in lieu of its undivided interest in tke property. (Rec., pp. 6, 7, 8 and 13, and 14.) Dexter paid no money in bidding in the property, except the

actual costs of the sale; but the trustee credited upon the bonds held by the appellee $\frac{40}{100}$ of the amount of the bid upon the 40 bonds held by the appellee. The appellee continued to hold title to the premises and possession of the bonds until February, 1882, when it sold the property and the 40 bonds to John C. Dorr for the sum of $56,000 and at the same time, on receipt of the money it conveyed the property and the forty bonds to Dorr. The appellee never made a sale of the collaterals pursuant to the terms of the pledge, except in the manner it made sale of the same to Dosr, as per terms of contract of sale between John C. Dorr and the appellee. (Rec., pp. 16, 24 and 25.)

Appellant acquired all the interest of Bowen Brothers and all their cause of action against appellee growing out of the transaction, by mesne transfers from their assignee in bankruptcy. Appellant files the bill in the court below upon the theory that the appellee is bound to account for the $56,000, the proceeds of the sale to Dorr. The theory of the bill is that the pledgors are entitled as a matter of strict right to the profits made by the appellee; but the court below ruled otherwise, and held that the purchase of the land at the sale made by the trustee, did not in legal effect operate to exchange the land for the bonds as collateral to the loan of $27,500; but on the contrary the sale by the appellee operated as a foreclosure of the pledge of the bonds when the appellee acquired title to the real estate, and was therefore entitled to the profits made in the sale to Dorr. To this ruling the appellant excepted and the same being overruled a decree was rendered against the appellant dismissing the bill, and thereupon the case is brought to this court upon appeal.

II.

ASSIGNMENT OF ERRORS.

The appellant now assigns the following errors, namely:

1. That the court erred in holding that the appellee is not bound to account to the appellant for the $56,000 received as the proceeds of the sale to Dorr.

2. That the court erred in holding that the sale by Smith, the trustee, operated to foreclose the pledge of the bonds. (Rec., pp. 64, 65 and 66.)

3. The court erred in not holding that the sale by Smith, the trustee, operated to exchange the land for the bonds, and that there was no foreclosure of the pledge until the sale was made of the land by the appellee to Dorr.

4. The court erred in not holding that the appellee account to the appellant for the $56,000, the proceeds of the sale of the pledge.

We will now briefly discuss the general questions raised by the ruling of the court below, and which we suppose will be raised by opposing counsel.

1. Was there a foreclosure of the pledge when the appellee acquired title to the land under the trustee's sale?

2. Was not the purchase of the real estate at the trustee's sale, in legal effect, an exchange of the bonds for the land, and did not the relation of the pledgor and the pledgee still continue until the sale to Dorr?

POINTS.

I.

The relation between a pledgor and pledgee is that of trustee and *cestui que trust.*

Perry on Trusts, Section 427.
Richardson v. *Mann*, 30 La. Ann., 1,060.
Wheeler v. *Newbold*, 16 N. Y., 398.

II.

The right of property does not pass to the pledgee but remains with the pledgor subject to the lien of the former, or until the sale of the collaterals, pursuant to the terms of the pledge.

Jones on Pledges, Section 552.
2 Kent Commentaries, 581.
Wheeler v. *Newbold*, 16 N. Y., 398.
Richardson v. *Mann*, 30 La. Ann., 1,064.

III.

The pledgee can not acquire absolutae ownership against the pledgor by purchase of the property, although the sale is regular and publicly made.

Jones on Pledges, Section 659.
Slee v. *Manhattan Co.*, 1 Paige's Chancery, 47.
Hoyt v. *Martense*, 16 N. Y., 231.
Middlesex Bank v. *Minct.*, 4 Metc., 325.

Bryan v. *Baldwin*, 52 N. Y., 235.
Torrey v. *Bank of Orleans*, 9th Paige, 663.
Michoud v. *Girod*, 4 Howard, 355.

NOTWITHSTANDING THE FORECLOSURE SALE, THE RELATION OF PLEDGOR AND PLEDGEE CONTINUES, SO THAT THE PLEDGEE MAY BE COMPELLED TO ACCOUNT TO THE PLEDGOR.

In *White Mountains R. R. Co.* v. *Bay State Iron Co.*, 50 N. H., 57, it was held that the pledgor of bonds secured by mortgage may redeem the bonds notwithstanding the pledgee has foreclosed the mortgage. The plaintiff applied for an accounting. The court say:

"The defendants contend that upon the allegations of the bill, the plaintiffs are not entitled to any relief. This position cannot be sustained. A failure to pay the debt at maturity does not vest the property in the pledge in the pledgee. The pledgee's possession is not regarded as adverse to the pledgor, and does not bar his right to redeem, unless it has continued for so long a time as to raise the presumption that the pledgor has relinquished his title in satisfaction of the debt. If the pledgee does not choose to exercise in a proper manner his acknowledged right to sell, he still retains the property as a pledge, and the pledgor's right to redeem continues. In the present case there has been no sale of the the pledged property. The bonds, not the mortgages, were the property pledged. The mortgages were mere incidents to the bonds secured by them, and a sale of the mortgaged property was not a sale of the bonds. If the sale was valid, R holds whatever he has realized thereby on the same terms as he held the bonds. If the sale was invalid it may be that R must account for whatever he has received under it to the trustees of the mortgage, that they may apply it for the benefit of all parties secured by those mortgages."

In *Richardson* v. *Mann*, 30 La. Ann., 1,060, notes secured by a mortgage were pledged as collateral. At the mortgage sale the pledgees among others were pur-

chasers. They afterward sold at an advance. Held, that the pledgees should be held liable to the pledgor, not for the price at which the property was resold, but merely for the amount of the notes. The court say:

"We see no reason why we should allow Mrs. R. (the plaintiff), more than the amount of her notes. We do not think the agent's responsibility should go beyond that. If he realizes the full amount of the notes, there is no speculation at her expense or to her loss.

"We think that under the circumstances of this case, when the property was bought in for $8,200, and on same day and at same place resold for $10,000 cash or its equivalent, the agent should not be permitted to profit by the resale, *except to the extent that there is excess over the amount due the pledgor.*"

In the case of *Slee* v. *Manhattan Company*, 1 Paige's Chancery, 47, where Slee assigned to the Manhattan Company as collatteral to an indebtedness of $2,000 due from him to the company, a mortgage for $4,000 owned by him, made by Frear and Hallowell secured by real estate, and the company having afterwards acquired title to the land by foreclosure of the mortgage and refusing to recognize Slee's right to the land by paying his indebtedness to the company, he filed a bill for an accounting; the chancellor in rendering the opinion of the court says:

"If the defendants, in the fair execution of the power, had sold and conveyed the premises to a stranger for one-half the amount of their debt, Slee would have been bound to pay them the balance, and would have had no claim to redeem the mortgaged premises from such purchaser."

* * * * *

"The defendants being the holders of the legal estate if they sold and conveyed the equity of redemption of Frear and Hallowell to a third person under the statute, it necessarily follows that the legal title would also pass with it by the conveyance to the purchaser, and the whole estate which existed in Frear and Hallowell, previous to the giving of the mortgage, would again become united in such purchaser."

"The same effect would be produced by a foreclosure of Frear and Hallowell's equity of redemption by a sale under a decree of this court, to which Slee was not made a party. A

stranger purchasing under the decree, would unite the legal estate which is in the defendants with the equity of redemption of Frear and Hallowell sold under the decree, and thus acquire the whole estate which existed in the mortgagors previous to the giving of their mortgage. In either case, Slee's claim upon the land would be divested by the sale, and the purchaser would hold it clear of all incumbrance. In neither case, however, would there be any foreclosure of the second mortgage, which was created by the assignment. That would still be open to redemption by him; but his equity of redemption would then attach itself to the money for which the land was sold, instead of the land itself. But the effect of a sale, either under the statute, or under such a decree where the mortgagees of the bond and mortgage became themselves the purchasers, is entirely different. In that case they only purchase the equity of redemption which existed in the original mortgagors, and the equity of redemption of the assignor still continues to attach itself to the legal estate, which remains unchanged in the purchasers, except that it is discharged of the equity of redemption of the original mortgagors, which, by the foreclosure, becomes merged in the legal estate." * * * "In this case the equity of redemption of Frear and Hallowell was all that was or could be foreclosed by the sale under the power contained in the mortgage. That equity of redemption being purchased in by the defendants. the legal estate was in their hands, and Slee's equitable claim thereron emained untouched by that foreclosure. And it makes no difference that the purchase of Frear and Hallowell's equity of redemption was made through the intervention of a third person; for by the operation of a resulting trust, the defendants have never been divested of the legal estate. No interest or estate whatever vested in Gen. Talmadge, even for an instant. The plaintiff's equity of redemption was therefore never separated from the legal estate, which has remained untouched in the hands of the defendants ever since the assignment of the mortgage to them in August, 1819. But even if the legal effect of this purchase by the defendant's attorney were otherwise, this court would never permit such a circumstance, whether the same was accidental or intentional, to defeat the natural and equitable effect of a purchase by the defendants of that outstanding equity of Frear and Hallowell." * * * "Again, the purchase of Frear and Hallowell's equity of redemption accrued to the benefit of Slee on the well-known principle of equity, that where the mortgagee has gotten a reversal of a lease, or obtained any other advantage, in consequence of his situation as such mortgagee, the mortgagor coming to redeem is entitled to the benefit thereof."

In the case of *Brown* v. *Tyler*, 8 Gray, 135, where

Mrs. Kinsley turned over to the People's Bank a certain mortgage owned by her secured by real estate, as collateral security to an indebtness due to the bank of $4,000, from a third party, and the bank afterwards acquired title to the land by foreclosure of the mortgage, and the bank having denied Mrs. Kinsley's right to the land, and a bill having been filed to compel the bank to account, the court says:

"Now, while we fully assent to the doctrine contended for on the part of the defendants, as applicable to the ordinary case of mortgagor and mortgagee; and should hold that after a foreclosure by the mortgagee it is to be taken as a payment of the debt secured by that mortgage, to the value of the land; yet it by no means follows that as between other parties, standing merely in the relation of pledgor and pledgee of said mortgage, the like consequence would follow. In general, where a party transfers to another, goods, stocks or notes of hand, as collateral security for a pre-existing liability, the same are held in trust for the benefit of all parties; but only the actual proceeds realized from the sales, or payments, as the case may be, are to be accounted for. If, before the actual reduction of them to money, a rise in their value takes place, the assignor has the benefit of it. If a decline in price the loss also falls on the assignor. It is only on the actual reduction of the pledged property to money, that the same is to be treated as a payment, and accounted for as such, and in the meantime the property is to be held as collateral. So, also, we think, if a debtor or a third person in his behalf, transfers a note secured by mortgage, and assigns both the note and the mortgage as collateral security for a debt; and the debt not being paid at maturity, the pledgee proceeds to enforce the collection thereof by a foreclosure of such mortgage, which is perfected by an entry and three years' possession; as between pledgor and pledgee such foreclosure does not change the relation of the parties, nor does such foreclosure necessarily operate as a payment of the notes for which it was pledged as collateral. In the opinion of a majority of the court, the foreclosure of the mortgage, by the party holding the same as collateral for the debts of a third person, did not, as respects himself and the party placing it in his hands, necessarily operate as a payment of the debt for which it was thus pledged. Such foreclosure was only one step in the process required to render available the pledge. The property as well after foreclosure as before, was equally held in trust for the benefit of both pledgor and pledgee, and was to be disposed

of for the benefit of all parties. On the one hand, the assignee, who held the same as collateral security, was not, in consequence of the foreclosure, required to take the land in payment, if he was ready and willing to proceed to reduce the same to cash by a fair and proper sale of the same; nor, on the other hand, would he be permitted to retain the same in his own right exclusively, regardless of what would be for the interest of the assignor. The property was holden in trust, first to pay the debt for which it was pledged, and, after enough had been realized to pay this debt, the bank was to hold the surplus for the benefit of Mrs. Kinsley."

In the case of *Walker* v. *Carleton*, 97 Ill., 582, where Walker procured Dennison, who held the legal title in trust for him of certain land, to execute a deed of trust upon the same and sign a note for $5,000, and this $5,000 note thus secured was delivered by Walker to Carleton as collateral security to a note of $3,000 made by Walker, as evidence of a temporary loan of money by Carleton to Walker, and Carleton having afterwards obtained title to the land by foreclosure of the trust deed, because of the non-payment of the $3,000 note, and a bill having been filed by Walker against Carleton to redeem the land, Chief Justice Dickey says:

"My view of the matter is this: assume even that appellees were right in their contention that the execution and delivery of the $5,000 note, and a trust deed made to secure the same, constituted a part of the same transaction with the loan of the money for which the $3,000 note was given, it follows, under the circumstances, that the real debt was a temporary loan, evidenced by the $3,000 note, and the deed of trust with the $5,000 note, did not constitute the debt or the evidence of the debt, nor a direct security for the debt, but, at most, was merely handed over, or deposited by Walker as collateral security upon the debt evidenced by the $3,000 note. Walker had the right to take up these collaterals at any time, by paying the temporary loan. There was no power given to the lender to sell these collaterals. He had the right when the same fell due, to collect the same for Walker, to convert thus the collateral into money, and apply the proceeds to the payment of the loan, and pay the surplus to Walker. He attempted to collect by selling under the power in the trust deed, declaring, in his notice, that this was a collateral security. He

failed to convert the same into money. He did transfer the title from High, the trustee, to Carleton, the creditor, and did cut off Dennison's right of redemption as a mortgagor; but, having thus acquired the legal iitle, Carleton held the same in pledge as collateral security, for $3,000 in the same condition as though the deed of trust made to High had originally been an absolute deed to Carleton, and delivered as a mortgage to secure the $3,000 note. Had the $5,000 note been the note of a stranger, payable to Walker and secured by a like deed of trust by Dennison to High, and had such $5,000 note been assigned and delivered with the deed of trust to Carleton, as collateral security upon the $3,000 note, and had Carleton procured a sale by High, and a trustee's deed from High to himself, it would not be doubted that Walker could redeem from Carleton. Had a stranger been a purchaser at the trustee's sale in the case at bar, or in the case supposed, a very different question would arise. I think that Carleton now holds the title to the land in question as security for the $3,000 note, subject to redemption by Walker as debtor and it will be subject to redemption until such equity of redemption is regularly foreclosed by decree or sale under a decree of court, or until otherwise lawfully extinguished; and therefore the court below should make a decree permitting Walker; to redeem upon just terms."

Jones on Pledges Section 659 says:

"One holding a mortgage as collecteral security may foreclose it upon breach of condition. If the foreclosure be a strict foreclosure or by writ of entry or by entry and possession the pledgee thereafter holds the land as security in place of the mortgage upon it. The foreclosure does not work a payment of the principal debt. In case the foreclosure has resulted in giving the pledgee the possession and title to the land the pledgor has the right to redeem the land upon paying the debt for which the pledge was made so far as this has not been paid by rents and profits of the land. The pledgee holds the land by title absolutely as against the mortgagor but as security merely as against the pledgee."

In the case of *Dalton* v. *Smith*, 86 N. Y., 182, where there had been assigned a bond and mortgage of $4,000 as collateral security for the loan of $2,000 and the pledgee had foreclosed the mortgage and bought in the mortgaged premises for $2,000 and afterwards sold the land for $5,000, Justice Rapallo in rendering the opinion of the court says:

"If the defendants maintain their claim that they were absolute purchasers of the mortgage agreeing to pay therefor the additional $2,000 only in case the mortgagor should pay the whole of the mortgage debt when due, that was an end of the plaintiff's case. But if on the contrary, they merely loaned $2,000 thereon to the plaintiff and the writing was intended to provide simply for the payment to him of the surplus in case the mortgage should be paid according to its terms, leaving unprovided for the case of a foreclosure, the form in which the transaction was put did not deprive the plaintiff of his equity of redemption in the mortgage, or of his right to any surplus which might be realized from it, or from the land into which it was converted by the foreclosure before his rights as between him and the defendants had been cut off. The equitable interest which he retained in the mortgage attached to the land bought in by his pledgees under their foreclosure, he not having been a party thereto, or to any other proceedings to foreclose him, and when they subsequently sold the land for more than the amount of their claim against the plaintiff, they became liable to him for the surplus."

ARGUMENT.

It may be observed that the opinion of the Circuit court was largely based upon an erroneous assumption as to the real facts. The record shows, (pp. 14, 16, 17, 24 and 25) that the appellee sold the bonds as well as the real estate to Dorr in 1882; but in the opinion of Wallace, J., it is said (Rec., p. 64) "the defendant still retains the bonds."

Mr. Dorr in his contract with the appellee (Rec., p. 24) says that he "desires to obtain possession and *ownership of said forty bonds in connection with the purchase of said property from said bank.*" On page 25 of the record his receipt for the bonds, signed by him says:

"Said bonds being delivered to me in accordance with an agreement dated February 19, 1881."

The testimony of Mr. Rocholl, the president of the bank, is as follows (Rec., p. 14, 16 and 17):

"Q. Where are those bonds now?
"A. Delivered to the purchaser of the land.
"Q. When were those bonds delivered?
"A. 1882.
"Q. At the time of this sale to Mr. Dorr?
"A. A year after. * * *
"Q. When the bank sold the land to Mr. Dorr, was there any agreement made concerning the delivery of the bonds?
"A. Yes, sir.
"Q. State if this is a copy of the agreement together with the receipt of Mr. Dorr when the bonds were actually delivered to him?
"A. Yes; that is a copy of the agreement made with Mr. Dorr. * * *
"Q. At the date of this receipt in February, 1882, executed by J. C. Dorr, did the bank receive all of the purchase money referred to in this agreement?
"A. Yes, sir, on receipt of that money we delivered to him the bonds."

In the opinion of WALLACE, J., it is said (Rec., p. 64), that the appellee

"is clearly bound to account for all moneys received from the collaterals."

In view of the facts as they appear on the record, it must be conceded that the $56,000 was in part, at least, "received from the collaterals."

Such was the ruling established in the case of *White Mountain R. R. Co.* v. *Bay State Iron Co.*, and *Richardson* v. *Mann*, *supra.*

Story's Eq. Jr., section 1,259, says:

"Whenever the property of a party has been wrongfully misapplied or a trust fund has been wrongfully misapplied or a trust fund has been wrongfully converted into another species of property, if its identity can be traced, it will be held in its new form liable to the rights of the original owner or the *cestui que trust.* * * * The right ceases only when the subject-matter is turned into money and mixed or confounded in a general mass of property of the same description."

In the case of *School Trustees* v. *Kirwin*, 25 Ill., 73, Chief Justice BREESE, says (pp. 76 and 77):

"An important inquiry of a court of equity, is whether property bound by a trust has come into the hands of persons who are either bound to execute the trust or to preserve the property for the persons entitled to it. If the cases on this subject are adverted to, it will be found that trusts are enforced not only against those persons who are rightfully possessed of trust property, as trustees, but also against all persons who come into possession of the property bound by the trust with notice of the trust and whoever so comes into possession is considered as bound with respect to that special property to the execution of the trust. * * * It is not necessary if the trust be moneys that the particular coin or kind of money or the individual pieces shall be identified in order to pursue, but its identity as a fund must be preserved so that it can be distinguished from all other money."

If therefore the bank at the time it acquired title to the land under the foreclosure bore the relation of trustee to

the pledgors of the bonds, and the bank not only has sold the land *but the bonds as well*, the appellee is clearly bound to account to the appellant.

Judge Wallace, in his opinion admits that the relationship of trustee and *cestui que trust* existed between the pledgor and the pledgee at the time that the foreclosure took place, yet he says (Rec., p. 66):

> "The defendant (appellee) here was not the vendor, but occupied the position of a creditor or of the *cestui que trust*, seeking to realize as much as might be practicable out of the fund by which its debt was secured."

It may be observed that the opinion of the Circuit court, as indicated from the last quotation, was based upon an erroneous assumption as to the real position the appellee occupied in acquiring title to the land. Independent of its inability as pledgee to acquire the absolute ownership in the land through the foreclosure proceedings, the record shows that when the bank acquired the real estate through the foreclosure sale it did not consider that it became the absolute owner of the land, but it considered that it held the land still as a pledge for the $27,500 of notes which it had discounted for the pledgors.

The foreclosure of the trust deed took place on the 2d of January, 1877. (Rec., p. 15.) Mr. Rocholl, the president of the bank, came to Chicago and attended the foreclosure sale at that time, and made arrangements with Mr. Dexter to bid in the land for the bank. When Mr. Rocholl returned to New York, after having acquired title to the land, through the foreclosure on the 7th of February, 1877, he addresses the following communication to the pledgors (Rec., p. 22):

"THE GERMAN AMERICAN BANK,
NEW YORK, Feb'y 7th, 1877.

"*Messrs. Bowen Bros., Chicago, Ills.*

GENTLEMEN: Please take notice that the sale of the $40,000 real property bonds, which, by our letter of the 24th ulto., you were notified would take place to-day, has been postponed to Wednesday, Feb'y 28th, 1877, at the same time and place, *unless your notes for $27,500 be paid before that time.*

Very respectfully,
H. ROCHOLL, *Pr's.*"

In this connection, Judge WALLACE in his opinion, further says (Rec., p. 65):

"The real estate was not pledged to the defendant, but a sum of money to be produced by a sale of real estate was pledged as an incident of the bonds. That sum, when received, was to become the money of the defendant, and was to extinguish defendant's debt against the pledgors *pro tanto.*"

This being true the bank must be concluded, by its written admission in its letter of February 7, 1877, that it had not received "*pro tanto*" of the proceeds of the sale of the foreclosure of the mortgage, although it then had title to the land through the foreclosure proceedings; in other words, that the bank had acquired the land in place of the bonds, and that no money had been realized out of what had been done up to that time; in other words, that the bank had nothing more than the land in place of the bonds still as security for the original indebtedness of $27,500, the actual indebtedness then existing unpaid between the pledgors and the pledgee.

Again Judge Wallace in his opinion says (Rec., pp. 66, 67):

"The circumstance that the defendant did not actually advance any money upon the purchase *is not material.* The transaction was the same as if it had paid the purchase price in money, and when it was received back its portion of the proceeds of the sale *had applied the amount upon the debt of the pledgor.*"

In referance to this part of the transaction Mr. Rocholl, the president of the bank, in his testimony, say (Rec., p. 19):

"Q. The bank furnished no money?
A. The bank furnished no money.
Q. And the bank never paid any money on account of their portion of the bid?
A. No.
Q. The only money then, I understand, that the bank has ever paid has been the actual trustee's expenses of the foreclosure and the taxes subsequent to that time on the land?
A. Yes, sir.
Q. And their own attorney fees concerning the matter?
A. Yes, sir."

We insist that it is *a material fact* that no money was paid. It indicates significantly that although there had been a foreclosure and a credit allowed by the trustee, George W. Smith, upon the forty bonds, "*pro tanto*," of the proceeds of the foreclosure sale (Rec., p. 24), the bank still considered that it held the land in place of the bonds after the foreclosure took place, and therefore insisted, as its president did in its letter of February 7, 1877, to the pledgors, that the original indebtedness of $27,500 *was still due and unpaid.*

If the transaction was, as Judge Wallace would seem in his opinion, to indicate it was, an investment on the part of the bank, in the land, why was it that the bank after it had acquired title to the land was still insisting that the actual indebtedness of the $27,500 *should be paid*, as expressed in the letter of its president of February 7, 1877? The three promissory notes amounting to the $27,500 were in the hands of Mr. Dexter, together with the forty bonds, when the foreclosure of the mortgage took place (Rec., p. 24), as is fully set forth in the receipt of Messrs. Walker, Dexter & Smith under date of January 2, 1876 (meaning 1877), but no

endorsement of money paid was made by Mr. Dexter, as the attorney for the bank, "*pro tanto*" of the proceeds of the mortgage sale upon the notes; and there is no evidence in the record whatever as to when the endorsement of the "*pro tanto*" proceeds of the mortgage sale was made upon the three notes amounting to the $27,500. No evidence to the contrary but that the endorsements were made when the bank found it would be more profitable to keep the land, or rather the surplus growing out of the sale of the land to Dorr, than to continue to hold the same as security for the original indebtedness after the foreclosure.

It is true that some time after the 7th of February, 1877, the records show that the bank did make an endorsement "*pro tanto*" of the proceeds of the mortgage foreclosure upon the three notes, amounting to $27,500; that endorsement was not made by Mr. Dexter; it was not made by Mr. Rocholl. Mr. Rocholl, in this connection in his testimony, says (Rec. p. 13):

"Q. Please examine the endorsements upon those notes and state in whose handwriting those endorsements are?
A. A clerk of ours; the present cashier.
Q. You mean the endorsement of payment?
A. Yes, sir.
Q. This is in the handwriting of a clerk of the bank?
A. At that time the clerk of the bank, at present cashier.
Q. About what time?
A. He is now the cashier; I say at that time he was a clerk, and now he is the cashier." * * *
"Q. You say you don't know when these endorsements were made.
A. No, sir.
Q. Of the receipts on the back of these respective notes?
A. No, sir. I do not know when they were made."

It is certain the bank had not made the endorsement when it wrote the letter to the pledgors of February 7, 1877. The cashier of the bank does not testify

although the president says he is the person who must know when the endorsement was made, and no reason has been assigned why the cashier of the bank was not produced to testify as to the time when he made the endorsement upon the $27,500 of notes.

We respectfully submit that that endorsement was an afterthought, and, with no evidence to the contrary, it must have been made when the bank found that it could make more money by claiming to own the land absolutely, when the land had increased in value, than it was to assume, at the time it wrote the letter of February 7, 1877, to the pledgors, that the notes were unpaid, and that it had received no portion of the proceeds of the foreclosure of the mortgage. We fail to see, in any aspect of the case, how the Circuit judge, in his opinion, could have *considered* the bank a creditor or a *cestui que trust*, with reference to acquiring title to the land under the foreclosure proceedings.

Without commenting further we respectfully insist that the decision of the circuit judge was not only rendered upon a misapprehension of facts, as we have mentioned, but also upon a misapplication of the principles of law as laid down in the cases which we have cited.

The foreclosure of the trust deed was necessary and proper in the performance of its duties as pledgee, to preserve and protect its trust. The bank did not inaugurate the proceedings; they were inaugurated by the State Savings Institution, the holder of thirty-two of the bonds of like tenor and amount as those held by the bank, (Rec., p. 38), and it attended the sale not make an investment in the land but in order to acquire, in the fulfillment of its trust, its pro rata portion of the land, as the forty $1000 bonds bore to the $100,-

000, the whole issue secured by the land described in the trust deed. Its conduct as expressed in its letter of February 7, 1877, bears out this attitude as trustee and not as a purchaser paying money with the expectation of acquiring the absolute ownership of the property and any profits that may arise out of the sale of the same, as it is conceded it paid no money except its *pro rata* portion of the expenses of the sale.

The bank came to the trustee's sale under the mortgage, holding the forty $1000 bonds as trustee or pledgee only; it did not come there as the absolute owner of those bonds; in other words as *cestui que trust*, or in other words as a creditor. It came there on the basis of its possession of the bonds upon which it based its credit as the subsequent proceedings disclosed, in authorizing Mr. Dexter as its agent to make the "*pro tanto*" bid for the land, together with other bondholders.

Had the bank as pledgee acquired absolute ownership of the forty $1000 bonds by some proceeding in court or otherwise where the equities of the pledgors were adjudicated or determined, prior to the foreclosure of the mortgage, then, perhaps, could the bank be entitled to be considered a creditor or *cestui que trust* in bidding in the property at the foreclosure sale, but not otherwise.

The court, in the case of *Brown* v. *Tyler*, *supra*, says:

"Such foreclosure was only one step in the process required to render available the pledge. The property, as well after foreclosure as before, was equally held in trust for the benefit of both pledgor and pledgee, and was to be disposed of for the benefit of all parties. * * * First to pay the debt for which it was pledged, and after enough had been realized to pay this debt, the bank was to hold the surplus for the benefit of the pledgors."

The court in the same case further says:

"It is only on the actual reduction of pledged property to money that the same is to be treated as a payment and accounted for as such, and in the meantime the property is to be held as collateral."

We insist, that the record shows, as we have referred to, that there was no "actual reduction of the pledged property to money," until the sale of the land and the bonds to Dorr.

It was contended in the Circuit court that because the pledgor was the maker of the mortgage, and because in the mortgage deed given to secure the bonds it was stipulated that in case of foreclosure, an absolute conveyance of the title held by the trustee could be made to the purchaser, or in other words, relinquish the right of redemption in the land, therefore that the foreclosure of the mortgage was the foreclosure of the pledge.

We insist that the appellant here is not insisting on any right to redeem the land, or to rescind the mortgage sale or to rescind the foreclosure of the pledge, the sale to Dorr; but is only asking that its trusteee, the appellee, account for the proceeds of the sale to Dorr. In other words we submit that there are two distinct estates involved in the discussion of the principles as applicable to the rights of the parties in this case. First, the right of redemption of the land, and second the right to the surplus. The right of redemption, it is not claimed the appellant possesses, but only the right to the surplus growing out of the sale of the property. In the case of *Slee* v. *Manhattan Company*, *supra*, the court made a distinction between these two kinds of estates, and insisted that the mere foreclosure of the equity of redemption of the mortgagor by the foreclosure of the mortgage as collateral security to the existing indebtedness did not operate to foreclose the second mortgage or the pledge itself.

The case of *Walker* v. *Carleton*, *supra*, was like the case at bar. Walker was the owner of the real estate, although the legal title was not in him; he caused it to be conveyed by Dennison, who held the title for him, and in that case he held that the pledge still existed after as before the foreclosure.

In conclusion, we respectfully submit that the court erred in not holding that the appellee account to the appellant for the $56,000, the proceeds of the sale to Dorr.

Respectfully submitted.

CHARLES P. CROSBY,
Of Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

CHARLES L. EASTON,

Appellant,

vs.

THE GERMAN AMERICAN BANK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF AND ARGUMENT FOR APPELLEE.

EDWARD SALOMON,

Counsel for Appellee.

BURGOYNE QUICK PRINTING CO., WALKER AND CENTER STS., N. Y.

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Supreme Court of the United States.

CHARLES L. EASTON,
Appellant,

vs.

THE GERMAN-AMERICAN BANK,
Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF AND ARGUMENT FOR APPELLEE.

Statement of the Case.

April 1, 1873, James H. Bowen, George S. Bowen and Chauncey T. Bowen, then doing business at Chicago, in Illinois, under the name of Bowen Bros., executed one hundred bonds, each for $1,000, payable to bearer, five years from date, with interest at eight per cent. per annum, payable semi-annually, with coupon notes for the interest attached, and on the same day, with their respective wives, executed a trust deed of an undivided two-thirds interest in certain real estate in Cook County, Illinois, to George W. Smith,

trustee, "for the purpose of securing the prompt payment of the said bonds and the interest thereon in whosesoever hands the same may be."

The trust deed provided that in case of default in the payment of said bonds or coupon notes, on the application of the legal holder of said bonds or any or either of them, it should be lawful for the trustee "to sell the said premises, or any part thereof, and all the right and equity of redemption of the said party of the first part (the grantors), their heirs, executors, administrators or assigns therein, at public vendue * * * to the highest bidder for cash * * * and upon the making of such sale or sales * * * to execute and deliver to the purchaser or purchasers a deed or deeds of conveyance in fee of the premises sold by virtue thereof, and all the recitals of such deed or deeds * * * shall be taken and considered *prima facie* evidence of all such facts and matters set forth in such recitals," to apply the proceeds to the payment of the expenses and the amount due upon the bouds, "which sale or sales and conveyances so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns and all other persons claiming the premises aforesaid or any part thereof by, from, through or under the said party of the first part, or any one of them."

The trust deed further provided that in case of default in the payment of principal or interest, or any part thereof, the whole of said principal and interest should at once, at the option of the holder of any one of said bonds, become due and payable, and the said premises might be sold in like manner and with the same effect as if the said indebtedness had matured in due course.

The trust deed was duly recorded in Cook County.

(*Printed Record*, original pp. 56 to 63.)

April 14, 1875, Bowen Bros. to secure a loan of

$27,500 executed to the appellee, three promissory notes, one for $7,000, payable two months after date, one for $7,000, payable three months after date and one for $13,500 payable four months after date, with interest, and delivered to the appellee as collateral security, for the payment of the notes, 40 of said bonds, with express authority to sell the bonds at public or private sale and without notice on non-payment of the notes.

(*Printed Record*, original pp. 37 and 38).

January 2, 1877, George W. Smith, trustee, upon the application of the State Savings Institution of Chicago, holder of thirty-two of said bonds, no interest having been paid upon any of them, sold at public auction after due notice, &c., the mortgaged premises to Wirt Dexter, the highest bidder, for $50,000 cash, the receipt of which he duly acknowledged, and which he applied towards payment of the expenses of the sale and the bonds, to wit: $472 upon each bond, and executed to the purchaser a deed of the premises reciting the facts of the sale, &c., and conveying the premises to Wirt Dexter in fee "and all right, title, benefit and equity of redemption which said James H. Bowen, Caroline A. Bowen, his wife; George S. Bowen, Julia E. Bowen, his wife; and Chauncey T. Bowen, their heirs or assigns, or any of them may at any time have had therein."

(*Printed Record*, original pp. 32, 40, 63 to 70).

In purchasing the land, Wirt Dexter acted as agent of the holders of the bonds, including the appellee, he having been authorized to bid on and purchase the property for them jointly, in order to protect their interests.

(*Printed Record*, original pp. 11 and 12).

When the sale was made, the president of the ap-

pellee was present with the 40 bonds, which he brought back with him to New York and afterwards sent to Wirt Dexter, to have the endorsement of payment made thereon. When they were returned to the appellee with the payment endorsed thereon, such payment, amounting together to the sum of $18,880, was endorsed on said three notes. No money was paid by the appellee to Wirt Dexter who conveyed to it $\frac{40}{100}$ of the property purchased by him, except that the appellee paid its proportionate share of the expenses of the sale. In a partition suit, a separate portion was afterwards set off to the appellee in lieu of its undivided interest in the property.

(*Printed Record*, original pp. 4, 5, 12, 13, 21, 30 and 38.)

June 2, 1877, a petition in bankruptcy was filed against James H., George S. and Chauncey T. Bowen in Chicago, and they were afterwards adjudged bankrupts. In June and December, 1878, they were discharged from their debts.

(*Printed Record*, original pp. 41, 42 and 90.)

April 21, 1880, Robert E. Jenkins, assignee in bankruptcy of the Bowens, by order of the Bankruptcy Court, sold all his right, title, interest and claim as such assignee, and all the right, title, interest and claim of said bankrupts in and to the land described in said trust deed to Carl F. Herrmann, and afterwards, by deed, dated and acknowledged May 13, 1880, conveyed the same to him.

(*Printed Record*, original pp. 85 to 88 and 95 to 100.)

April 21, 1880, after the sale of said land, said assignee in bankruptcy sold his claim against the appellee for interest in all collaterals pledged with the appellee by said bankrupts to the appellant Charles L. Easton,

and afterwards, on the 15th day of May, 1880, assigned said claim to him.

(*Printed Record*, original pp. 85 to 89 and 53, 54, 55.)

February 8, 1881, the appellee, by deed of quit claim and release, conveyed its right, title, interest, claim and demand to the land in question for $56,000 to John C. Dore, who purchased with notice and knowledge of the before-mentioned conveyance and claim of the assignee in bankruptcy.

(*Printed Record*, original pp. 83 and 84, 31, 32, 91, 92.)

February 24, 1881, James H. Easton, a brother of the appellant who acted as his solicitor, having by conveyance obtained from Carl F. Herrmann all his right, title and interest to the land in question, filed his bill in equity in the United States Circuit Court for the Northern District of Illinois, against the appellee and certain other persons as alleged tenants, setting forth the same facts which are stated in the bill of complaint in this action, omitting the assignment and transfer to the appellant Charles L. Easton and alleging in lieu thereof said conveyance to Carl F. Herrmann and from him through Josiah H. Helmer to James H. Easton, also omitting the sale and conveyance of the land in question by the appellee to Dore and praying, amongst other things, for an account against the appellee, and that James H. Easton might be permitted to redeem said land by payment of what might be found unpaid on said promissory notes of Bowen Brothers.

(*Printed Record*, original pp. 71 to 78.)

March 16, 1881, the appellant Charles L. Easton, as solicitor for James H. Easton, filed an amended and supplemental bill in the last mentioned suit setting forth that since the filing of said original bill, this

appellee had conveyed to John C. Dore, its right, title and interest to said land for $56,000, that Dore had accepted said conveyance with full knowledge of the fact by him alleged, that said land was still held as collateral security to said indebtedness of $27,500, and praying, amongst other things, that said John C. Dore might be made a party defendant in said action and that James H. Easton might be permitted to redeem said land.

(*Printed Record*, original pp. 78 to 83.)

Subsequently, in September, 1883, before the commencement of this action, said chancery suit of James H. Easton was settled between him and John C. Dore, the latter paying a certain sum of money and receiving a conveyance from James H. Easton of his interest in the land.

(*Printed Record*, original, pp. 32, 33, 34, 100 to 109.)

In January, 1877, after the trustee's sale of the mortgaged property, but before the forty bonds held by the appellee had been transmitted to Wirt Dexter to have payment of the proportionate share of the proceeds of the sale endorsed thereon, the president of the appellee informed Bowen Brothers that the appellee intended to sell the forty bonds, but no sale was ever actually made thereof. The appellee retained the bonds until a year after the sale of the land to Dore, when it delivered them to the latter, in pursuance of an agreement made with him at the time of the sale, the bonds being considered worthless because the makers had been discharged in bankruptcy of their obligation to pay them, and John C. Dore, desiring to obtain possession thereof as connected with the title to the land.

(*Printed Record*, original, pp. 30, 36, 37, 39, 40, 41.)

The appellant's bill of complaint in this case claims that, after the sale under the trust deed, the appellee held the land as collateral security for the payment of the notes, in lieu of the forty bonds, and that under the assignment made to him by the assignee in bankruptcy of his interest in the collaterals pledged with the appellee by Bowen Brothers, he has a right to so much of the $56,000 received by the appellee from Dore as may be in excess of the original claim of $27,500 and interest and expenses, &c.

(*Printed Record*, original, pp. 1 to 9.)

The answer of the appellee sets up the facts hereinbefore stated and claims:

1st. That under the trustee's sale Bowen Brothers lost all their right of redemption, Wirt Dexter became the absolute owner of the property as against them and the appellee holds the share afterwards conveyed to it in like manner;

2d. That, at all events, the effect of the trustee's sale was to foreclose Bowen Brothers' right of redemption so far as the bonds were concerned and to separate the land from the bonds; so that, even if the right of redemption under the notes remained, the appellee, after the sale, held the bonds, reduced in amount by $472 each (the proportionate share of the proceeds of the sale), and the land, each separately, as collateral security;

3d. That, if there remained a right of redemption after the trustee's sale, it was, so far as the land was concerned, afterwards conveyed by the assignee in bankruptcy to Carl F. Herrmann and through him to James H. Easton and has been extinguished by the compromise of the chancery suit for redemption brought in Chicago;

4th. That the appellant in this suit, by the assignment from the assignee in bankruptcy to him, only took, if anything, a right to redeem the 40 bonds after their separation from the land and never acquired any right either to the land or to its substitute, the money.

The appellant's bill of complaint was dismissed on the merits in the Court below.

Point I.

THE TRUSTEE'S SALE CUT OFF ALL EQUITY OF REDEMPTION OF BOWEN BROTHERS REGARDING THEIR NOTES AS WELL AS THEIR BONDS.

First. The pledge of the bonds as collateral security for the notes, transferred to the appellee all the rights to which *bona fide* holders of the bonds would be entitled, including the right to have the land sold under the trustee deed and *including the right to become a purchaser at such sale and to apply the purchase money in payment of the notes.* The transaction really was a mortgage upon undivided four-tenths of the property in the trust deed described with full power of sale as conferred therein.

Slee vs. Manhattan Co., 1 Paige, 48, 78.

It is not disputed that Bowen Brothers, after the trustee's sale, could not redeem the land by payment of the bonds. The regularity of the sale is not questioned and the equity of redemption, so far as the bonds were concerned, was thereby certainly foreclosed. *Then, it follows, that the $50,000 purchase money was properly applied towards payment of the bonds, i. e., the appellee properly received $18,880 of that purchase money on its*

40 bonds, and having received that amount in part payment of the bonds which it held as collateral security, it necessarily and rightfully applied it towards payment of the notes, holding the land, of course, as any other purchaser, of its own risk and free from any further right of redemption.

Again; Bowen Brothers having lost the right to redeem the land by the payment of $40,000 and interest due on the appellee's bonds, how is it possible to maintain that they had still retained the right to redeem it by payment of the smaller sum of $27,500 and interest? That right they had before the sale, and if they retained it, then that sale was a mere farce, and the trustee's deed a piece of waste paper.

Second. The trustee's sale was made in strict compliance with the power contained in the trust deed. Wirt Dexter became the purchaser and paid $50,000 in money, as his deed from the trustee recites, which is expressly made *prima facie* evidence of that fact, and the money was in fact applied by the trustee towards the payment of the bonds, the appellee receiving on its forty bonds $18,880, which it credited on the notes. Now, whether Wirt Dexter acted for himself or as trustee for the bondholders in order to protect their interests, cannot change the character of his purchase, or prejudice Bowen Brothers' interests, or create legal or equitable rights for them. The deed of the trustee to Wirt Dexter was given in the name and by the authority of Bowen Brothers, and conveyed to him absolutely all their right and equity of redemption in the premises for the $50,000 which he paid. Can they or their assigns be heard to claim that that deed was not absolute as to a part of the premises because Wirt Dexter acted as agent or trustee for others in making such purchase and afterwards carried such trust into effect?

Bowen Brothers were parties to that sale, which was

made upon their express authority, in order to pay their bonds, and, so far as the defendant was concerned, their notes secured by the forty bonds, and it resulted in a cash sale for $50,000 which was applied towards payment of their bonds. They had an opportunity to protect their interests at the sale. Are they and their assigns, while affirming that sale, not estopped from claiming still some equities of redemption against the assignees of such purchaser?

Third. The case at bar is clearly distinguishable from one where a mortgage and bond is pledged as collateral security by the *mortgagee,* and the *mortgagor's right of redemption* is foreclosed, the pledgee becoming the purchaser at the foreclosure sale. *There, the pledgor, the mortgagee, is not a party to the sale,* and his right of redemption of the pledge is not extinguished. *Here the mortgagor is the pledgor, he is a party to the sale, has an opportunity to protect his interests as pledgor as well as mortgagor, they being identical, and no reason exists why a valid foreclosure of his equity of redemption as mortgagor should not extinguish that as pledgor.* To hold otherwise would be to say that the trustee's deed conveyed nothing to the purchaser, if he was the pledgee.

A mortgagee could not at common law become the purchaser on a sale made by himself under the power, because he could not execute a deed to himelf.

Jackson vs. Colden, 4 Cowen, 266.
Arnot vs. McClure, 4 Denio, 41, 44.
Mowry vs. Sanborn, 68 N. Y., 153, 160.

That has no application to this trustee's sale, as the trustee was not the purchaser, but Wirt Dexter was, and he and his assignees acquired a perfectly good and valid title.

Slee vs. Manhattan Co., 1 Paige, 48, was the case of the foreclosure of a mortgage by advertisement, pledged by the *mortgagee* to the Manhattan Company which became the purchaser. It was held that the *mortgagee's* right of redemption of the pledge was not therby foreclosed (pp. 78 and 79).

Hoyt vs. Martense, 16 N. Y., 231, was also a case where a *mortgagee* transferred a mortgage as collateral security and then joined with his assignee in an action of foreclosure against the mortgagor. The assignee became the purchaser and it was held that the sale did not affect the rights of the two co-plaintiffs *inter se* as assignor and assignee.

These cases are unlike the one at bar.

Fourth. It is not disputed that, if Wirt Dexter had bought in the land for his own benefit and paid the $50,000 purchase money, of which the appellee would have received $472 on each of its forty bonds which would have been credited thereon in precisely the same manner as was actually done, the appellee would have retained the bonds thus reduced still as collateral to the notes and all equity of redemption of Bowen Brothers in the land would have ceased by the sale.

The question then arises whether the appellee did not stand in the same position as any stranger at that sale, with perfect right to bid in the property and become its purchaser as against all the world, including Bowen Brothers. If the appellee had no such right, it must be on account of some technical rule or some relation of trust which forbid its purchasing the property. The appellee did not cause the sale to be made or itself make it, so that there is no technical difficulty in the way of its becoming the purchaser of the property sold by the trustee; and as to the existence of any trust or duty by the appellee towards Bowen Brothers concerning this sale, the opinion of the learned

Judge of the Court below seems to be impregnable both upon principle and authority (Printed Record, original pp. 111 to 125).

The principle is that "no party can be permitted to purchase an interest where he has a duty to perform that is inconsistent with the character of a purchaser."

Torrey vs. Bank of Orleans, 9 Paige, 662.

The appellee had no duty to perform at this sale; it was not obliged to bid or to see to it that the property brought a fair price. *This was in no sense a sale of the pledge by the pledgor and the principles that govern such sales are inapplicable here.* There is no reason in law, equity or conscience why the appellee should not have had the same right that any other person had to become a purchaser of the land at the trustees' sale and obtain a title to it free from all equities or rights of redemption of Bowen Brothers.

Fifth. In the Court below the appellant relied much upon the case of *Walker vs. Carleton*, 97 Ills., 582. While the opinion of Chief Justice DICKEY upon the motion for a rehearing seems to be an authority in his favor, it cannot be claimed that that was the opinion or the decision of the Court. By a majority of one out of seven judges, three dissenting, the Court held the trustees' sale in that case to be void, *because the trust deed was not a valid or operative instrument and the trustee had no power to sell the land.* On a motion for a rehearing the Chief Justice, one of the original majority of judges, while also then dissenting from the grounds on which the decision had been made, refused to disturb it, because he *individually* held, that even if the trust deed was a valid instrument, the $5,000 note secured by it was held as collateral security and the sale did not cut off the pledgor's right of redemption. *His opinion, therefore, is not that of the Court, but only that of one judge out of seven* and is not sup-

ported by any adjudicated case or by any reasoning of his own, except that he places it upon a par with the case where a mortgagee pledges his mortgage.

Point II.

IF, AFTER THE TRUSTEE'S SALE, BOWEN BROTHERS RETAINED A RIGHT OF REDEMPTION IN THE LAND, IT WAS SUBSEQUENTLY SOLD AND CONVEYED TO HERRMANN AND HAS SINCE BEEN EXTINGUISHED.

At the sale of the assignee in bankruptcy, April 21, 1880, Carl F. Herrmann purchased all right of the assignee and of Bowen Brothers to the land and received a deed to that effect May 13, 1880. Herrmann afterwards conveyed his interest in the land to Josiah H. Helmer and the latter to James H. Easton, a brother of the appellant. James H. Easton thereupon filed his bill in equity in the United States Circuit Court for the Northern District of Illinois against the appellee and others to redeem the land, and after learning of the sale of the land to Dore for $56,000, filed his supplemental bill, making Dore a party, charging that he was a purchaser with notice of his equity and asking to redeem the land. Charles L. Easton, the complainant in this, acted as solicitor for James H. Easton in that suit. That suit and claim of James H. Easton was compromised and a conveyance of the land made to Berger for the benefit of Dore. (*Printed Record*, original pp. 85 to 90, 95 to 108, 32 to 34, 71 to 83).

Whatever right of redemption in the land, therefore, existed after the trustee's sale, has been extinguished.

Point III.

THE COMPLAINANT IN THIS SUIT NEVER ACQUIRED ANY INTEREST IN THE LAND, OR IN THE $56,000 PURCHASE MONEY, EVEN IF A RIGHT OF REDEMPTION REMAINED IN BOWEN BROTHERS AFTER THE TRUSTEE'S SALE.

First. Whatever otherwise the effect of the trustee's sale was, it certainly cut off the right of redemption of Bowen Brothers, so far as their bonds were concerned, and if they retained any right of redemption in the land regarding their notes, the effect of the sale at all events was *a separation of the land from the bonds*, each of which was reduced in amount by $472, endorsed thereon; so that after the sale the appellee would have held the forty bonds thus reduced and the land, *each separately*, as security for the notes.

By the sale of the assignee in bankruptcy the equity of redemption in the land was first sold and conveyed to Herrmann and then "the claim of the assignee against the appellee for interest in all collaterals pledged with it by the bankrupts" was sold to the appellant. The deed to Herrmann of the land was made May 13, 1880; the assignment of the claims to the appellant was made May 15, 1880 (*Printed Record*, original pp. 85 to 89, 95 to 100, 53, 54, 55).

It follows, then, that while Herrmann became the owner of the equity of redemption in the land, if any remained, the appellant became the owner of the equity of redemption in the bonds, reduced in amount by the sale, but still held as collateral security by the appellee.

Second. If any equity of redemption remained in the land after the trustee's sale, James H. Easton, the owner of that equity, after the sale of the land to Dore, might perhaps, instead of pursuing it against the land, as he did, have elected to pursue it against the $56,000

purchase money. *He could not have pursued it against both.*

Third. When the assignee in bankruptcy in May, 1880, sold and conveyed to Herrmann "all the right, title, interest, estate, claim and demand of said bankrupts which they had on the second day of June, A. D. 1877," in and to the land, *all the right of redemption* of Bowen Brothers therein, if any existed, passed to Herrmann, *and nothing touching the land could possibly pass to the appellant* by the subsequent sale of the claim of the assignee against the appellee for interest in all collaterals pledged with it by the bankrupts.

What the assignee had sold to ~~Helmer~~ Herrmann, *i. e.*, the right of redemption of Bowen Brothers in the land, he could not and did not again sell to the appellant. *Whatever else the appellant may have got for his five dollars, it was certainly* NOT *any right to the land or its proceeds.*

At that time the appellee still held the land which it afterwards, on February 8th, 1881, conveyed to Dore (*Printed Record*, original pp. 83 to 85).

It seems almost absurd for the appellant to claim that, while *all the right* of Bowen Brothers to the land was sold to ~~Helmer~~ Herrmann, yet that *he*, the appellant, by this subsequent sale of the land to Dore, obtained rights to its proceeds. That was not his view when he filed the bill for redemption in the name of his brother, as assignee of ~~Helmer~~ Herrmann, against the appellee, and the supplemental bill against Dore to enforce the alleged right of redemption sold by the assignee in bankruptcy (*Printed Record*, original pp. 71 to 83).

He was successful in this venture to the extent of compelling Dore to ~~bring~~ buy up the alleged claim to a right of redemption (*Printed Record*, original pp. 33 and 34).

After this, and now, as I understand it, the appellant claims that although ~~Helmer~~ Herrmann took *all* the interest of Bowen Brothers in the land, when, afterwards the ap-